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Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on General Government

Insurance Statute Law Amendment Act, 1989

Loi de 1989 modifiant des lois concernant l'assurance

Second Session, 34th Parliament

Monday 22 January 1990



Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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CONTENTS

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Monday 22 January 1990

The committee met at 0900 in the Trafalgar Room, Peter Piper Inn, Sudbury, Ontario.

INSURANCE STATUTE LAW AMENDMENT ACT, 1989 (continued)

LOI DE 1989 MODIFIANT DES LOIS CONCERNANT L'ASSURANCE (suite)

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

Etude du projet de loi 68, Loi portant modification de certaines lois relatives à l'assurance.

The Chair: I am going to recognize a quorum. The chairman has a nasty habit of starting on time and I want to try to keep to that. We have approximately 23 delegations, either individuals or associations, to hear from today. We have two additions, one at 12 o'clock, a Mr Taylor, and one at 12:15, a Mr Mantello. So you could add those to your list. We have in some cases, for individuals, 15 minutes; for some associations a half an hour. I am going to try to be fairly strict in terms of time allocation, both for the presenters as well as for the questions and the interactions. My little preamble will not come off your time, Dr McMullen, so do not worry about that.

The people running the microphones tell us we do not have to push the buttons, they are going to try to keep track of who is speaking, etc. We will go from there.

We have Dr McMullen for the next 15 minutes; if I could give you any direction, probably anywhere from five to seven to eight minutes for presentation. If you do not have anything written do not worry about it; we will get copies of this. Everything you say is being recorded for Hansard. For the next 15 minutes, sir, we are yours.

SUDBURY AND DISTRICT MEDICAL SOCIETY

Dr McMullen: I am Bill McMullen, the president of the Sudbury and District Medical Society, and I appreciate this opportunity to address you in that role.

Our members are quite concerned over being placed in what we feel is a quasi-judicial role with respect to defining "permanent and serious

disfigurement" or "permanent serious impairment of important bodily function caused by a continuing physical injury." While MDs can generally agree that death is defined by the criteria for brain death, I cannot conceive of physicians or the judiciary agreeing on situational application of the proposed legislative guidelines, other than death, defining compensable damages. Consequent to this difficulty we foresee greater rather than lesser involvement of the judicial system in attempting to apply the proposed vague thresholds to the individual case.

How does one assess a case of permanent serious disfigurement without looking at the individual's life situation? Clearly scars on a professional hockey player's face do not have the same implications for the athlete as they would for the television personality. A no-fault insurance equivalent to the negated Workers' Compensation Board meat chart is simply not possible in our diverse society. While the effects of an injury may be both permanent and disfiguring, the seriousness can only be defined by looking at the individual as a complete biopsychosocial entity. To deny the relevance of the psychosocial is to deny the definition of health, and the individual's right to same, accepted by all levels of government in this country as an extension of the World Health Organization definition of health.

The situation becomes even more complex when one attempts to define a permanent serious impairment of important bodily function. What is an important bodily function? If the essence of our humanity is our cognitive and emotional factors, should the greatest weighting from a compensable point of view not be placed on psychosocial consequences of injury? Clearly 13 years of practising medicine in northern Ontario has taught me that functional seriousness and permanence are only definable with reference to the individual's reaction to illness and injury, be this with a child's reaction to leukaemia, a young athlete's reaction to amputation—look at Steve Fonyo or Terry Fox, who had permanent serious disfigurement and yet were able to run across the country, or most of the way—or individuals' reactions to acceleration or deceleration injuries to their cervical spines; that is, whiplashes. In the latter case, with equivalent mechanisms of injury

and similar initial physical findings and identical radiological findings, I have seen patients who have never recovered and whose lives have been ruined by the injuries and permanent complaints of serious physical pain. On the other hand, I have known individuals who, while complaining of physical pain, have not missed a single day's work or a tennis game.

It also strikes us as unfair to ask us initially to define a patient's right to compensation. The patient approaches us to assess his condition and relieve pain. To intersperse the definition of a legal threshold into this relationship makes honesty and truth difficult on both parties, given the vague definitions. And to do this—that is, define permanence—within a two-year framework from the date of injury is unrealistic.

In summary, we feel that the proposed legislative criteria are so vague as to preclude fair application and so narrow in their definition of health as to be unfair to our patients. Really that is all I had to say.

Mr McClelland: I appreciate your presentation to the committee here this morning. I think it would be safe to say—and this is not by way of rebuttal or to enjoin debate, just to perhaps try to help clarify the situation—there is clearly some misunderstanding. You have not stated what I think has been stated by others from your profession representing the same point of view. I think it is important to understand that clearly any physical or psychological injury that is a result of or directly attributed to an accident, by way of example, to the trauma, will fall within the immediate compensation provided by the scheme.

But your point is really getting into that definition of the threshold of no-fault and where you get into it. I just suggest to you—and ask for your response—that while certainly there will be some determination, some finding before the courts and before the alternative dispute mechanism that we envisage to determine whether an individual falls out of or within the threshold, surely the vast majority of cases would be easily determined. We do not pretend that this is perfect and is going to clearly define each and every case, but it seems to me that in the vast majority of cases you, as a professional and a physician, would be able to help the injured party, and indeed help everybody concerned, determine on one side or the other. There will be a group of people near the threshold, on either side, who will clearly require a process of fact-finding and determination by the courts. But I would like your comment on that because it seems to me

very obvious that we are going to pick up the vast majority of cases.

Dr McMullen: I am not so sure that you are going to pick up the vast majority of cases, particularly with what we would define as minor injuries, the whiplash. The individual's reactions to the event are so important in defining it that it becomes extremely difficult. The worst patient from my management point of view right now is a whiplash injury. It has gone on for eight years. Settlement was years ago. Her family has been wrecked by it. I have examined her and I have written many legal reports that say there is nothing to find, but that individual reaction has been such that it has devastated her and her family.

Mr McClelland: Just one supplementary with respect to that particular case: I think there is some danger getting to specific cases. How long before—

Mr Kormos: Oh, oh.

Mr McClelland: I said some danger, Mr Kormos. How long before that individual began receiving any compensation? I believe you said it was a lady. How long did it take for her to begin receiving benefits under her current coverage and, hence, how long before she really got into that process of getting her life back in order?

Dr McMullen: I would be guessing at a couple of years. But the problem is that the individual definition of the event—and pain is a subjective experience; there are real findings but one defines it for oneself—controls how you react to it over life. I think that there is a larger number than just the few. As I say, we can agree about death, but the person who loses his leg and is able to run across the country, is that a permanent serious problem if he has adapted to that injury?

Mr McClelland: I think under the scheme, yes, it is.

I know there are other people who want to talk to you.

Ms Oddie Munro: We have seen a lot of concern on the question of definition of "fault," the inclusion of psychological trauma into the definitions and also the payment for those kinds of injuries on the no-fault side through immediate rehab and through the inclusion in the medical advisory team of a wide variety of professionals. I am wondering whether that helps or hinders your case as far as being a member of that team is concerned, whether you are the only one signing any forms or not. It is my understanding that there would be a variety of people who immedi-

ately would be assessing and evaluating any damage.

Dr McMullen: I think it helps the team, but if I am an individual practitioner, putting me into the initial definition of that individual's meeting that threshold is a problem. The only time I have ever ended up in court was when I said somebody was not disabled, and I spent a day in court being asked to defend that position with the person feeling he had a right to be defined as disabled because he had osteoarthritis. I think what I am getting at in saying that is that it is getting in the way of a therapeutic relationship when you start right from the beginning asking us to be defining whether somebody has met a threshold or not, and when the individual approaches you, not only for the relief of pain, but for definition of threshold maybe.

0910

Ms Oddie Munro: I think the primary concern, though, is to get rehabilitation to the person as fast as possible. I am not so sure that a determination of threshold is going on at the time except to amass evidence in that regard. In your current practice, how do you determine—do you have any feelings of misgiving at the current time? I gather that you would have to go to a court of law in order to quarrel, or at least to support the client. In this particular instance, you would be able to do it under the no-fault benefits side, unless it was a threshold case.

Dr McMullen: I think in the areas that Mr McClelland mentioned, where they approach the threshold and the definition of threshold, we see greater involvement in this judicial process.

Mr Kormos: Doctor, two things that you speak of: One is the threshold and then the business of no-fault has been raised.

The threshold is designed to keep people out, not to let people in. That is what Osborne said about the impact of thresholds. I should say there is an effort on the part of a whole lot of people to create the illusion that threshold is there to keep out the modest, the trivial, the nuisance claims, those people who would constitute some sort of blight on the compensation system, yet it remains that broken backs, fractured skulls, broken arms, broken legs in most cases would not meet the threshold.

There was some caution made about using specific cases, and I have no doubt that there are some people who would rather that specific cases were not used, but we used more often than a couple of times the case of a 12-year-old kid run over by a drunk driver, who suffers a broken

back, for whom treatment constitutes probably two years of a treatment regimen, who does not receive a single penny in compensation for pain and suffering because he does not meet the threshold. He does not receive a single penny of so-called no-fault.

Indeed, the drunk driver is entitled to no-fault, and the government has admitted that drunk drivers are going to get no-fault until they are convicted, and we all know that in the courts, in the position that they are in, a drunk driver can take six, 12, 18 months, two years to be convicted. A drunk driver gets treated better than a kid with a broken back who was run over by the drunk driver.

There is also the illusion that is being fostered that somehow the insurance companies have changed their spots, that they are no longer going to be parsimonious when it comes to paying out no-fault. Well, the insurance industry has for a long time had short arms and deep pockets. It is real good at collecting premiums but not so good at paying out compensation, including no-fault compensation.

The government talks and puffs its chest out about its new supervisory scheme. If it is anything like the superintendent of insurance and the schemes that they have had in place so far, which have been so readily co-opted by the insurance industry, I am afraid that injured people, and in particular injured people even expecting no-fault, had better not hold their breath. And you guys, the people in the medical profession, are going to be victims as well in your efforts to care for those victims.

Mr Runciman: Yes or no?

Dr McMullen: Yes.

The Chair: Thank you for your presentation.

Next is Maria White. For the committee's information, it is exhibit 102. You probably did not bring it with you, but the clerk has a few copies. Again, everything will be recorded on Hansard. We do have copies of the letter you filed with the clerk. The next 15 minutes is yours.

MARIA WHITE

Mrs White: Maria White is my name and I am here on behalf of my husband, actually, and for anyone else who is ever in his situation.

My husband was in a very serious automobile accident on 14 November 1987. He suffered severe head injury, a fractured pelvis and right arm and he was incapacitated for quite some time.

Upon his release from the hospital, he required specialized nursing and care. At the time I was

not able to quit my job and care for my own husband. At his request, I hired nursing assistance and this cost us—well, it did not cost us, but it cost the insurance company quite a lump sum of money. They were charging us \$35 an hour for their assistance, for their care of looking after my husband.

Now, had I not had the insurance assistance with this, I would not have been able to do it myself, especially with the fact that we were only receiving \$140 a week from the insurance company plus what I was getting paid at work. When you are in retail, you do not get paid very much. I was quite fortunate to have the insurance company pay the expenses.

Not only did my husband need a nursing assistant at home, but he also needed a psychiatrist later on, and it was only through the insurance company that we were able to afford this. I want to congratulate and say thank you to the rehabilitation centre which gave us all the assistance and care in the world. Without this, it would have been very, very hard and difficult for my husband and me.

I truly and sincerely oppose what you people are trying to do. I do not think anyone can afford to maintain the medical assistance they receive at \$50 a day. That is just unbelievable. Believe me, I have been through it. I went through it for two years with my husband. I am really upset that you people are trying to cut back on something that is very, very important to those people who have had injuries of such kinds.

Mr J. B. Nixon: Mrs White, thank you very much for coming before the committee and talking about a personal situation.

I think one of the values of having the public hearings and having the types of discussion that we are having is not only that we have an opportunity to hear constructive criticism and identification of problems with the legislation as proposed, but that we also get a chance to clear up perhaps some of the misunderstandings as to what is proposed. Under the schedule of no-fault benefits which we are proposing it is greatly expanded from the existing; for instance, the \$140 a week goes to \$450 per week after tax in terms of lost income.

There are actually two components which relate to medical care, in a sense. There is a medical and rehabilitation component, which goes to a maximum of \$500,000, and there is a new component called long-term care, which does not exist under existing insurance policies. Without going through the specifics of your husband's case, I can assure you that the

intention is to expand the no-fault benefits so that all of those needs which your husband had and which were covered would indeed be covered under the new program, and in fact more. Had there been other needs—for instance, retrofitting the home or a longer extended period of care required—they would have been funded out of the no-fault benefits too. I just want you to be aware of that, that in fact all the care he needed and received would have been fully satisfied, I believe, out of this proposed program.

0920

Mr Runciman: In any event, I want to say to the witness that despite what Mr Nixon has just said, every expert witness involved in the rehab field who has appeared before us has been very critical of this legislation and expressing the same kinds of concerns you have expressed to us here today. They are looking at increased institutionalization and they are looking at all kinds of negatives to this initiative undertaken by the Liberal government.

I am just curious about your own situation. You talked about your husband requiring psychiatric care. Again, this is something that probably would not pierce the threshold. Without getting into the specifics or knowing the specifics of your husband's circumstances, it certainly sounds—at first blush anyway—that it is the sort of thing that would not pierce the threshold so that you could not seek recourse through the courts, if indeed this sort of an accident occurred in the future, if this legislation goes through as currently worded.

I am just wondering, what has happened in your own situation? Have you reached some sort of a settlement with the insurance industry? What is happening? Have you had to go through the court system? What is your own situation?

Mrs White: We have reached a settlement, yes, definitely.

Mr Runciman: An out-of-court settlement?

Mrs White: Yes.

Mr Runciman: And you are quite satisfied with that settlement?

Mrs White: Yes, we were.

Mr Runciman: And you have compared it with the benefits you would receive under the current legislation in a general way, the kinds of benefits that might be available under this legislation?

Mrs White: We would have received literally nothing had—

Mr Runciman: —this legislation been in place.

Mrs White: Been applied, yes.

Mr Kormos: Mrs White, you are like a whole lot of other people who, if this bill is passed, will be denied compensation. I should point out there is whole lot of touting of these so-called no-faults. We have had no-fault benefits in Canada, in Ontario, as you well know, for over a decade. Quite frankly, the ceiling of \$140 in the no-fault schedule on wage replacement is grossly inadequate, is so unrealistic. If it had been indexed, either when it was first enacted, or at any point down the road, it would be darned close to \$450 now anyway. But the big difference between what is in effect now and what is being proposed is that you can seek your shortfall; that is to say, if the \$140 is inadequate, as it is for most victims, you can go after the negligent party to make up the difference.

Under this scheme that is being proposed, even if the drunk or reckless or careless or negligent driver who mows you down is the wealthiest guy in town and doing it with a Jaguar or Mercedes-Benz or what have you, he is protected from being responsible for your excess economic loss. This bill protects him from having to pay you as an innocent victim for your financial losses above and beyond the so-called no-fault provision.

What that does there is protect very much the drunk, negligent, careless, reckless driver. There is the illusion of giving you something, but there is the reality of taking twice as much back. It is sort of like telling your community, "We're going to do a major campaign against drugs. That is the good news. The bad news is that Marion Barry is in charge of it," you know, the mayor of Washington, DC. The insurance industry, I should tell you, is as happy as pigs in a barnyard. They are so pleased that they will be able to deal directly with their insured. They will not have these little lawyers running around mucking things up, telling them how much this injured person really needs or deserves in terms of compensation.

To leave the insurance industry in charge of determining how much compensation should be paid to a victim is—never mind putting Mayor Barry in charge of an antidrug campaign; it is like putting Dracula in charge of the blood bank. The insurance industry has never been magnanimous, has never been charitable or generous. They have always been there to maximize their profits and to minimize the amount of money they pay out. The illustrations of people who have had to sue their own insurance company to collect those no-faults, those tales are legion.

The number of people who are going to have to fight with their own insurer once this legislation goes through is going to increase, because the insurance companies are going to be even more reluctant to pay out that money, notwithstanding that the government says, "Oh, we're going to be tough with them." Oh, sure, they are going to be tough with the insurance industry. That will be the day. They are rolling over on their backs with this legislation now, because this legislation is exactly what the insurance industry has been begging for. This legislation is going to reduce compensation to innocent injured victims and generate incredible profits for the auto insurance industry. If it looks as if this legislation is going to pass, you get to your stockbroker really fast and scrape together all the nickels and dimes you have and start buying insurance stock because those guys are going to be making money hand over fist. They are going to need wheelbarrows to take it to the bank. Every penny of that is going to come from drivers and victims here in the province of Ontario. Thank you for coming today.

Mrs White: Thank you. I think it is totally unfair. I really do.

The Chair: Thank you for your presentation. We appreciate the time you have taken to come today.

The next presenter is Brian Insley from the Sudbury Regional Police Association. Sir, I believe we have exhibit 97. I do not know how many members brought it with them, but they have it. For the next 15 minutes, committee time is yours. If you could allow five or 10 minutes for some discussion after your presentation, we would greatly appreciate it.

Mr Insley: I brought 10 copies of it. Was I supposed to? Did everybody get one?

The Chair: Okay, we may not have one, but we will get them circulated. Please proceed.

SUDBURY REGIONAL POLICE ASSOCIATION

Mr Insley: I asked for standing here on behalf of my members. We are quite concerned with this no-fault insurance. Our biggest problem is sick time. We have an accumulative sick time of 18 days a year. The way I read this new no-fault plan, if one of my members or myself gets hit by, let's say, an impaired driver we have to use all our sick time before we can get this \$450 a week.

We feel this is very unfair because the members of our force value their sick time and we save it up for emergencies. We have no recourse for collecting this time back once we use

it. The way it is now, if we are hit or struck by an impaired driver, have an accident, we are allowed to sue the person for our time back. But if I were off for a year I would exhaust all my sick time, I would have no recourse for gaining my time back. Therefore, I return to work, I work for a year, I have a heart attack, I have no more sick time, I have no money coming in except unemployment insurance. We feel this is very unfair. Likely there are other professions and people in the province who have the same kind of sick-time bank and thus they are going to be struck the same way we are.

We feel that because a person is working and has made plans for his future he should not be struck down by the nonworker who just sits back and collects his \$450 a week and does not have a job to begin with. I think there are going to be a lot of issues raised on this because there are a lot of other people in the province who have this sick-time bank.

The second issue I would like to raise is that we are allowing the risk driver to be on the road. We investigate many accidents where it is the third-time offender, impaired driver, the fellow is a careless driver. The way the insurance company is now, he cannot afford to buy insurance so he does not get on the road. This plan will allow everybody to get on the road and we will all be paying the same rates. So you could have the fellow who has been charged with impaired three times and he has the same insurance I have and he is back out on the road, driving all over the place. We feel this is also unfair.

0930

The third issue is pain and suffering. There are many accidents where people are not paraplegics and they do go through a lot of pain and suffering. This plan does not allow any reimbursement for this pain and suffering and discomfort of the nonresponsible driver. If a fellow who is just driving down the road with his family and a person runs into him, then he is not allowed to sue for any pain and suffering or discomfort. That happens lots.

Basically, those are the three issues we are quite concerned about and that is about all that we have to say to you today.

Mr J. B. Nixon: Thank you, constable, for appearing before us. I would just like to deal with a couple of issues you raised.

The first is your suggestion that drunk drivers or careless drivers who have been convicted of offences will be paying the same auto insurance premium as any other careful, good driver. One

of the elements of this program is to ensure that the companies use fault rating. It is not a no-fault premium-setting system; it is a no-fault compensation system. So fault in accidents and convictions for Highway Traffic Act offences or Criminal Code offences will be very much a determinant in setting premiums; the bad driver will pay higher premiums and the good driver will pay lower premiums. Hopefully, your concerns on that issue will not be realized.

The second one has to do with sick leave benefits. It is the option of the employee to choose to use sick leave or take his no-fault loss-of-income benefits. The program does not say the employee must take sick leave before he takes the no-fault loss-of-income benefit. It is quite to the contrary. It says the employee can choose to use either. In any event, if it is a long-term injury, once you go on to a disability program, if one exists in your employment arrangement, the no-fault benefits can be used to top that up. Effectively, you get full income-loss supplementation.

Mr McClelland: Constable Insley, thank you for being here. My colleague Mr Nixon has mentioned two points that I was in fact going to discuss. I thought it was very important that we understand that the no-fault compensation does not—I think that needs to be re-emphasized over and over again. I talk to so many people who believe that no-fault implies a constant for every individual who will drive in terms of premiums, and that simply is not the case.

I want to speak very briefly, and I doubt we are going to have enough time for a response. Let me just say to you, sir, that with respect to the pain and suffering element, clearly some people will be precluded from collecting. In fact, we think that most people will be precluded from collecting money from a pain and suffering component. Under the present system that will be eliminated.

Let me just tell you where we are coming from philosophically, and we may agree to disagree on this, but again I think it is important that you understand what I feel very comfortable with as a member of the Legislative Assembly in terms of approaching this legislation. Quite frankly, we are saying that pain and suffering in terms of a retributive type of component would be fine in our present system ideally, if it could exist, but we are saying if it is an either/or under the suggested system, we would much rather concentrate on income replacement and rehabilitation and getting people back into productive work in part of their community. Quite frankly, that is the issue it boils down to.

If we can remove the pain and suffering from the vast majority of cases, that element, which at best is a lottery, bearing in mind that 30 per cent of the victims never collect anything, and we can instead put in place a system that will compensate people financially and give them the wherewithal to get back into productive work, be a part of their community and enjoy life with their families, that is the route that I feel comfortable going with and hence feel comfortable supporting that component.

As I have said, we may agree to disagree philosophically on that, but I look at it that income replacement and indemnity insurance certainly are more important in my mind than a retributive element that currently exists in the tort system.

Mr Runciman: I appreciate your attendance here today. Could you tell me what the salary is of a first-class constable in your association?

Mr Insley: I think we are around \$45,000 now.

Mr Runciman: Mr Nixon suggested that any innocent victim has the option of using up sick leave or taking the no-fault benefits. The no-fault maximum is \$450 a week. If you are a first-class constable with three young children, a mortgage to pay, a car to pay for, all kinds of other costs, I would pose this question to you: Is a first-class constable making \$45,000 a year going to use up his sick leave in order to maintain his mortgage payments, etc., or is he going to opt for the no-fault benefits? What would you do?

Mr Insley: I am sure I would use the sick benefits first and then I would have to fall back on the \$450.

Mr Runciman: Of course, you are right. This is the sort of smoke-and-mirrors game the government continues to play.

I want to say one other thing. We are getting this from a police officer, we are hearing this from experts all over the place with respect to the safety question and, again, the government has recognized this as an issue but I do not think there has been enough attention focused on it. They have increased the OPP highway patrols, etc., in an attempt to cover up the problem, in my view, but what happened when Quebec introduced no-fault? We had testimony to this effect last week. They also undertook the same kinds of initiatives that Ontario is now announcing in this so-called grandiose scheme, but a study undertaken at the University of Toronto indicated that highway accident frequency increased in a

significant way under no-fault, and that has been the case in every jurisdiction.

I want to say that if you transpose the Quebec experience to Ontario, it indicates that we could be facing up to 100 additional deaths on the highways in this province. So I think it is important to have your kind of testimony as a police officer, the concerns you are expressing here today about highway and road safety under no-fault legislation. Thanks very much. You may want to say something more on that. I have a minute or so for you to respond.

Mr Insley: No. I still feel we are going to put the dangerous driver back on the road because the no-fault is there. Now they have to pay dearly, so if you do catch them on the road, they generally do not have insurance.

Miss Martel: Constable, I just want to follow up on another point you should be worried about, although you did not mention it directly. That is the \$450 limit. Given that you have already told us a bit about your salary, I am sure many of your people would be concerned. Because they are used to that salary, they would have lots of mortgage payments, etc., bills that they have got to pay and that \$450 is not going to cover.

Let me put it in this perspective: Last year about this time I was going around the province fighting another bill, concerning injured workers this time, and it is interesting to note that in that legislation the Minister of Labour at that time, who is the member for York Centre (Mr Sorbara), proposed an increase in the benefits going out to disabled and injured workers because he said the maximum, \$31,000, was insufficient. In fact, in the legislation we go to \$40,000 maximum over two years and then 175 per cent of the average industrial wage, all of that because that minister claimed that the limits that were in place were not sufficient for people to meet their payments and feed their families, etc.

Now we have got another piece of legislation, again dealing with people who are going to be disabled, who are going to be hurt, who still have to make mortgage payments, and this government is claiming how wonderful it is to have benefits limited at \$450, not even indexed. Even the workers' compensation benefits are indexed and they are a hell of a lot higher than what we see in this bill.

I guess what I would like to say to you is that your people should be bloody worried about that, because we have got two pieces of legislation dealing with people who are injured who need financial assistance and this government surely has not come through on this piece of legislation

like it did on the other, and even the other is not sufficient.

Mr Insley: We are also concerned. The majority of us are constables, but we have guys who are officers and have a higher rate of pay. We have sergeants, staff sergeants and inspectors, and they make considerably more money than we do, so they would be really concerned.

Mr Kormos: Let us destroy now any illusion about this system being one that is designed to be fairer to the victim. I mean, this system is one that is designed to create new profits for the insurance industry. We should cut the crap here and now.

We are talking about a gift from the taxpayers of Ontario to the insurance industry in the first year alone of over \$140 million directly, and then we are talking about savings to the insurance industry by virtue of compensation that the law will protect it from having to pay out to innocent injured people. Estimates vary. The total new windfall for the insurance industry could range anywhere between \$630 million and \$700 million, perhaps even \$800 million.

0940

We are talking about subsidizing the insurance industry with taxpayers' dollars and with the compensation that broken legs, broken backs and fractured skulls would properly receive. It is, in my view, pretty damn shameful that a drunken driver would be treated better than a kid with a broken back and that the kid with the broken back is going to be subsidizing one of the most powerful industries we see. Look, the insurance industry in Ontario has been a smug sacred cow that has been steadily delivering a line of sacred bull for a long time and all this legislation does is put more money in their pockets and take it out of yours.

The Chair: Constable, thank you for your presentation.

The Chair: Mr Brouillard.

Mr Brouillard: I am wondering if I could speak French.

The Chair: Sure, if you will allow some of the members to get some translators. Just give us two minutes to do that, okay? For the next 15 minutes, the committee time is yours.

Mr Brouillard: We will not try to explain anything in English.

The Chair: The clerk will be distributing. Why do we not just wait a couple of minutes? If you are more comfortable in French, that is fine.

I would mention to the committee that the airline situation has been rectified. We are flying out at 8:15 tonight on Air Canada. A bus was originally scheduled to come and pick us up at five. I am going to suggest to the clerk that we try and delay the bus until about 6:30, which would allow us to get supper here and then we could go straight to the airport. Unless I hear any violent objections from anybody, I am going to proceed under that guideline.

Mr Kormos: What about nonviolent objections?

The Chair: I may entertain nonviolent objections later.

Mr Kormos: I do not have any.

The Chair: Please proceed.

JEAN-GUY BROUILLARD

M. Brouillard: Mon nom est Jean-Guy Brouillard. En 1981, j'ai eu un accident au Témiscamingue en motocyclette. J'ai eu le pied gauche séparé en deux, presque jusqu'au talon. Le dessous du pied était arraché et entre les orteils, c'était fendu à peu près un pouce.

J'ai eu affaire avec le système de «no-fault insurance» au Québec. J'ai passé les deux premières semaines à avoir des opérations au Québec. Au bout de deux semaines, je suis revenu en Ontario et j'ai été deux mois chez nous sans soins médicaux ni rien. En guise d'incapacité permanente, ils m'ont donné dix pour cent de 80 pour cent de 26 114,44 \$: ça fait 2 298,06 \$.

Permanent disfigurement, 10 per cent of 40 per cent of \$26,114.44 is \$1,044.57. Suffering and loss of enjoyment of life, seven per cent of 20 per cent of \$26,000—anyway, altogether I got \$3,700.

They say here that:

"These amounts may appear rather minimal to your client, but they are fixed by law and the insurance company has no discretion as to their amount. However, your client is probably still receiving a loss-of-income annuity which will be payable for this period of disability and which is probably far superior to Ontario's scale of benefits. Your client is also entitled to a different expense without any limit of time or amount. The annuities payable in Quebec are similar to workers' compensation to the extent that their purpose is first to rehabilitate the victim and then to provide some kind of compensation during this rehabilitation."

Finally, I ended up going to school at Cambrian College for a couple of weeks and I managed to go to—the insurance company said, "You're going to have to go to school," so I went

to Laurentian University for one year. The second year I went there to apply for my second year and they said, "You're not going to go there, you're going to go to work."

So I ended up pounding the pavement looking for a job, with a foot injury. I was still on the Inco payroll, applying for all kinds of jobs that I was not qualified for. I had two firms of lawyers in Quebec and one here in Ontario and there was nothing I could do, because the insurance was deciding what I had to do.

If that is going to work the way it seems to work with me, the Workers' Compensation Board of Ontario, I do not even know why we are even talking about this. That is exactly the way it worked with me. That is all I have got to say.

Mr J. B. Nixon: I have a question. My understanding is that you had an automobile accident in Ontario.

Mr Brouillard: A motorcycle accident in Quebec.

Mr J. B. Nixon: Did you have an insurance policy?

Mr Brouillard: In Ontario.

Mr J. B. Nixon: And your claim was against the person who had caused the accident?

Mr Brouillard: Covered by no-fault insurance.

Mr J. B. Nixon: In Quebec, someone else caused the accident in Quebec?

Mr Brouillard: Yes.

Mr J. B. Nixon: So you were effectively dealing with the public auto insurance corporation in Quebec.

Mr Brouillard: No-fault insurance, yes.

Mr J. B. Nixon: Which is sort of like our Workers' Compensation Board here; it is public no-fault too.

Mr Brouillard: It is exactly the same thing as no-fault insurance.

Mr J. B. Nixon: So you had two lawyers in Quebec?

Mr Brouillard: Two different firms in Quebec.

Mr J. B. Nixon: One after the other?

Mr Brouillard: Yes.

Mr J. B. Nixon: And a firm here?

Mr Brouillard: Yes.

Mr J. B. Nixon: And they were all dealing with the government in Quebec?

Mr Brouillard: Yes.

The Chair: Any other questions?

Mr Runciman: I am not sure of the point Mr Nixon was trying to make other than perhaps that it is a government-run program and that those are not terribly successful. I agree with the analogy with WCB, but I think there are a lot of things that we can compare with respect to the Quebec plan and what Ontario is trying to institute in this province, especially with respect to the benefit limitations and the ability not to recover for pain and suffering and in a host of other areas in terms of compensation and so on.

It is important to have testimony such as yours, sir, as someone who has experienced the shortcomings of no-fault and hopefully to alert the government members, the Liberal members of this committee, to the very real concerns that are out there. I think your testimony has been most relevant and helpful to the people who have experienced the problems in Quebec.

0950

Mlle Martel : D'abord, je dois dire que vous avez raison; on n'a pas besoin d'encore une Commission des accidents du travail ici en Ontario. J'ai eu beaucoup de problèmes avec celle qui est en place en ce moment.

Deuxièmement, je voudrais dire aussi qu'on voit la même sorte de problème avec les compagnies d'assurance que l'on a avec la Commission des accidents du travail; c'est-à-dire, les médecins doivent faire une sorte de rapport sur la personne souffrant d'incapacité permanente suite à un accident et il est absolument incroyable de demander au médecin de dire quel est le pourcentage d'incapacité permanente de la personne qui a été blessée.

Avec un système comme celui-là, on n'a pas d'indication quant aux personnes qui ont des blessures permanentes à la tête ou si elles sont en mesure de travailler encore ou non. C'est vraiment difficile; on a parlé avec des médecins au début et il est très difficile pour eux de prendre de telles décisions.

Je suis d'accord avec vous et je dois dire encore que l'on n'a pas besoin d'encore une commission, ici en Ontario, comme la Commission des accidents du travail. C'est la même chose qui est proposée avec ce projet de loi.

M. Brouillard : Là où je suis encore en désaccord quant aux personnes blessées, c'est que les compagnies d'assurance vont pouvoir envoyer les rapports au juge et le juge pourra dire: « You do not meet the threshold. » Mais si le rapport favorise le gars qui est blessé, la compagnie d'assurance va pouvoir aller en appel avec l'effet du « threshold » et encore démêler

ça. S'il trouve un autre docteur qui dit : « Okay, M. Brouillard, vous êtes "disabled"; vous êtes dans cette catégorie-là », la compagnie d'assurance va pouvoir ramener ça en cour et dire : « M. Brouillard n'est pas dans cette catégorie-là, et on a trouvé un docteur qui va le dire. »

Ca fait que ça va être donc une affaire de rapports de docteur, la même chose qu'il y a dans la loi aujourd'hui. Il vont y avoir quatre ou cinq docteurs dans une ville qui vont remplir les formulaires de recommandation. Puis le reste, les autres vont être coupés, et quand vous êtes coupé, vous n'avez pas de revenus.

Quand j'étais en cour contre la Régie d'assurance automobile du Québec, il n'a pas été question de la pension que j'avais à Inco; je ne travaillais pas à Inco pour le « fun »; je travaillais à Inco pour les avantages qu'il y avait, pour les pensions. Ils n'ont pas pris cela en considération du tout. Ils ont simplement dit : « Mais, c'est ça. Okay, fine. C'est ce que tu vas avoir. That's fine. » Les compagnies d'assurance ont le droit de ramener ça et dire : « Okay, si tu as trouvé un docteur qui te classe dans cette catégorie-là », mais eux autres ont le droit, puis seulement devant un juge. C'est encore une autre affaire : pourquoi pas devant un jury ?

Il y a de grosses possibilités que, à un moment donné, il y ait un certain pourcentage des membres du jury qui vont connaître quelqu'un d'assez proche qui est touché par l'assurance et qui est en « wheelchair », qui n'aura rien du tout ou bien qui aura mal, et du mal, ça ne se voit pas tout le temps. Vous savez, à la colonne vertébrale vous pouvez passer des rayons X et des « CAT scans », des tomographies, à la journée longue et vous ne trouverez pas ce qui est là.

Ce sera toujours mieux de ne pas trouver ce que vous avez que de le payer — ceux qui ont le dessus — c'est subventionner les compagnies d'assurance. Il y a bien des manières de baisser le coût des assurances : avoir des « airbags » dans les chars ; ne pas construire les chars sans régler un peu la manière de construire les chars afin qu'ils résistent mieux à l'impact.

Il y a beaucoup de manières de faire ça au lieu de prendre l'argent dont les personnes ont besoin pour la réhabilitation, pour se remettre sur pieds. Moi, je trouve que c'est impensable d'aller de cette façon-là.

Mr Kormos: You see, what we are talking about is a system where the insurance companies want to be able to tell you how much premiums you have to pay and then they also want to be able to tell you how much they are going to pay you when you are hurt or injured. We in the official

opposition, the New Democratic Party, are opposed to that. The Liberal government is in the back pockets of the insurance industry. The insurance industry gave donations in excess of \$100 million to the Liberals in the last general election.

The Chair: It was \$100,000.

Mr Kormos: I am thinking of profits. It was \$100,000. The insurance industry gave donations to people like Brad Nixon here of \$1,800; to Carman McClelland, who has left the room, \$1,400; to Lily Munro, \$1,000. These people are fighting real hard for the insurance industry.

The insurance industry is going to make profits like it has never imagined before and the reason it is going to make those profits is because the Liberal hand is dipping into your pocket once again. In the left pocket they take the taxes; in the right pocket they take the money to give to the insurance industry.

The Chair: Thank you for your presentation.

The next presenter is Mr Liddle from the Northern Frontier Insurance Co. If you would make your presentation about eight to 10 minutes and then leave some time for some questions and answers, we would appreciate it.

NORTHERN FRONTIER INSURANCE CO

Mr Liddle: My name is David Liddle and I am president of Northern Frontier Insurance Co. Thank you for allowing me the time to speak to you this morning.

Northern Frontier Insurance Co, by way of introduction, is a small Ontario insurance company, Canadian-owned, and is the only stock insurance company with a head office here in northern Ontario.

Last year, in 1989, we had premium income of approximately \$17 million, of which automobile insurance accounted for 46 per cent. By provincial standards, though, we are a very minor player with about 9,000 policies in force and we only write about two tenths of one per cent of the Ontario auto insurance market. Last year, in 1989, our company lost \$230,000, and this followed a loss of \$460,000 in 1988.

Over the last 10 years of our company's existence, we have accumulated a deficit of over \$1 million, all of which can be directly attributed to our losses in automobile insurance. In this committee, we are all here today because between the years of 1985 and 1987 the Ontario public became very concerned about the increasing cost of auto insurance. In April 1987 the government froze auto insurance premiums and

since then has done very little to actually contain the cost of the auto insurance system.

Bodily injury claims in particular have increased dramatically in magnitude and frequency over the last few years. Bill 68, as I see it, represents a bold and positive initiative that addresses the affordability question as well as other inequalities and inefficiencies in the current insurance system.

We as an insurance company perceive our role as an administrator of policyholder funds, and as such we are prepared to administer any system that the government might impose upon us. We only ask that auto insurance premiums be sufficient to cover the costs of the system.

Last year, because of the obvious unprofitability of automobile insurance, we reduced our exposure by 1,300 policies and wrote \$1.4 million less in automobile insurance premiums than the year before. Provided that there is some evidence that the Ontario Insurance Commission, in regulating rates, will permit a rate level commensurate with the cost of the proposed system, our company will do its utmost to make automobile insurance available to the drivers of northern Ontario.

Bill 68, I believe, provides a balance in the tradeoff between product and price. According to the government's actuaries, the proposed system should, on average, not result in an increase in premium to our policyholders, whereas if no changes were made to the product, definitely a 30 to 35 per cent increase in premiums would be required.

Bill 68, in addition to addressing the cost issue, also makes other changes to the existing system that will benefit the Ontario driver. There is a much greater degree of fairness in the proposed system than in the current system. In northern Ontario, where distances are great, winter road conditions are perilous and rock cuts are numerous, we see a large number of single-vehicle accidents.

Even though drivers buy insurance to protect themselves in the event of accidents, these injured drivers become true victims of the current system: \$140 a week is hardly protection against the economic loss these individuals suffer. Bill 68 provides an insurance system designed to assist all accident victims equally, regardless of whether they slide into a rock cut or whether another driver slides across the white line. No longer will adequate compensation be based on finding someone else to blame.

An added positive feature of the new system will be the speed with which payments are made,

with income replacement being made within 10 to 30 days. Currently we see some accident victims waiting years while their claims go through the legal system.

The greatest change that Bill 68 will create for our company is in the provision of claims service on a first-party basis. We really do look forward to the implementation of the proposed system because, for the first time, our claims department can devote its attention almost entirely to looking after our own insureds, our own policyholders, rather than defending litigation brought about by some other insurance company's customer.

By removing the adversarial system and supplanting it with a system where we look after our own customers, we will be better able to compete on the basis of service to our insureds. As a small company that promotes personalized service, imagine the opportunities that presents to us.

I believe that one of the most overlooked yet significant aspects of the legislation is the provision of improved rehabilitation benefits, not only because of the increase in maximum benefits but because of the greater incentive there will be for insurance companies to try to get their insureds or claimants back into a productive role in society. I believe this emphasis on rehabilitation will spawn a new growth industry whose *raison d'être* will be to get the accident victim back to work, through physical, psychological and occupational therapy, as soon as possible.

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Before my time is gone and you are left with the impression that I am only positive about the legislation, let me get on to things that I consider weaknesses. The introduction of a threshold is discriminatory and will add significantly to the costs of the system. The bill says that some accident victims may receive compensation for pain and suffering while others may not. From an operational perspective, I would have preferred to see a pure no-fault system as has been in place in Quebec for over 12 years. Without increasing the costs of the system, benefits to all claimants could have been enhanced.

I feel strongly that the cost of automobile insurance, whatever it is, should be absorbed by the driving public and should not be transferred to others. Despite the government's efforts to keep premiums as low as possible, I object to the transfer of the cost of the automobile insurance system to other governmental bodies or other insurance plans. I believe the committee should give serious consideration to amending section 57, which says that accident benefits should be

secondary to all other sources. Surely there are other ways to prevent the duplication of benefits from collateral sources.

In summary, I have touched briefly on some of the variables of Bill 68 as they affect our policyholders and the operations of Northern Frontier. Although there are some weaknesses in Bill 68, I do believe that the proposed legislation will result in more equitable compensation to accident victims, quicker delivery of benefits, increased efficiency in claims handling and a stabilization of costs and premiums. Our staff at Northern Frontier look forward to delivering these benefits to the drivers of northern Ontario. Thank you.

Miss Martel: There was just one line I wanted to address in your brief because I guess it is going to explain the difference between how you and I view this legislation. It was that you felt this legislation addresses the affordability question and other deficiencies in the system in terms of affordability. I do not think this legislation does anything at all to address that question. The Minister of Financial Institutions (Mr Elston) has already told us we can expect at least another eight per cent increase in premiums in urban areas, and who knows what is going to happen yet in rural areas, and that for people who have already seen their premiums increase 4.5, 4.5 and 7.6 per cent since this government, in particular this Premier (Mr Peterson) said he was going to freeze those rates in 1987. People are even more cynical and sceptical of what has been happening, and this legislation does not do anything to address that question.

The other deficiencies, these are some of the problems I am getting in my office. We get people who call about auto insurance at least once a week. There is the inability to get insurance other than in the Facility Association. I had a young gentleman last week who came from British Columbia, who has been all over town and was told the only place he could get insurance now was in the Facility Association. Every company in this city refuses to cover him. Second is the discrimination that is still inherent and allowed in this particular system; that is, an insurance company refusing to cover a family because of the bad driving record of one member. We get that complaint all the time. Third is the cancellation of policy for absolutely no reason at all. All this legislation does now is to allow people who have policies to have the benefit of 30 days' notice before they are finally cut off. I am sorry, but I hate to tell you that for the people whom I represent this bill does absolutely

nothing to address any of those important questions. You can respond if you want.

Mr Liddle: I certainly could respond, but then I am afraid that would preclude the others from speaking.

Mr Kormos: My problem is that the auto insurance industry says it lost \$142 million in 1987. Yet when the government's own multi-million-dollar Ontario Automobile Insurance Board looked at 1987, it found out that when the insurance company says, "We lost money" it means, "We made money." John Kruger of the Ontario Automobile Insurance Board found that there was not a loss of \$142 million in 1987; indeed there was a profit of some \$55 million.

If a \$142-million loss, when the insurance companies say loss, means a \$55-million profit, and they are only claiming to have lost some \$100 million in 1989, I trust that means that the profits are somewhere around \$75 or \$80 million. How can the insurance industry persist in this distorted recordkeeping and distorted reporting of profits?

Do not come back and say that Mr Kruger is wrong, because then you will get all these Liberal folks upset here because they are the ones who paid him the millions and millions of dollars to run his board. How can you say, "We lost money," and Kruger says you made money? Who is not telling the truth here? Is Kruger lying or is the insurance industry lying?

Mr Liddle: I cannot speak for the industry, but I certainly can speak for our company and I would be willing to have you come through and peruse our books to show me where the profit is, because there is no person greater than I who would like to see that.

Mr Runciman: I find it quite ironic, sitting through this testimony, to know that we have certain members of the NDP, some Marxists and the insurance industry advocating pure no-fault. As a free-enterpriser, I have a lot of difficulty with you guys sitting there with that kind of testimony. I just came in and did not catch the beginning of your testimony, but you mentioned something like reducing your case load by 1,500. Was that the number I heard?

Mr Liddle: It was 1,300 policies last year.

Mr Runciman: You dropped 1,300 policies. How did you go about that process? Are these the highest-risk people whom you dropped?

Mr Liddle: Not necessarily. In some cases it was the dropping of agency contracts with certain brokers, and certainly not taking as many new drivers as we would have previously.

Mr Runciman: Where did these people go? Do they all go to Facility, or do you have any idea where they go?

Mr Liddle: I suppose some of them went to Facility, some went to other markets. I have no idea of where they actually went.

Mr Runciman: You said that you lost a lot of money last year. We can look at your books if we do not believe it. How many years have you been losing money?

Mr Liddle: You may have missed that at the beginning. We lost \$230,000 last year, \$460,000 in 1988, and that is why we reduced the amount of auto last year. Over the 10 years of existence of the company, we have accumulated a deficit of \$1 million.

Mr Runciman: Why are you still in business?

Mr Liddle: Because we are also in the property liability insurance business and quite frankly there is some hope, we feel. We are optimists.

Mr Runciman: I do not blame you for being an optimist with this legislation. Is there any merit to the argument that auto insurance is something of a loss leader when you are looking at the other lines of insurance, that you are bringing that kind of customer into the business so that you can indeed attract him to other lines of business?

Mr Liddle: It has been a loss leader.

Mr Runciman: Yes, and I gather by your nonresponse that you agree with my comment. I am just wondering. I had one insurance fellow—this was not in the testimony, but talk about this just one element of the windfall for the insurance industry, the tax breaks and the OHIP breaks which total, I think, around \$143 million, the last figure we heard—who indicated to me that to his insurance company that would mean, if we are talking about the eight per cent increase that Mr Elston has been referring to, if you factored in the \$143 million and did not take that into account, if the government was not making that handout, it would be the equivalent of a 15 per cent increase. Have you done any calculations along those lines, what that tax and OHIP break is going to mean to your company?

Mr Liddle: No, we have not looked at what impact it will have on the company but certainly, with the filing of rates that we had to do by the end of December, we have had to show to the board how that money would be passed back to the policyholders.

Mr McClelland: Very briefly, Mr Runciman just touched on one issue that I wanted to bring up

with you, and that would be subsection 4(4) of the draft regulations. He mentioned it as a tax break to insurance companies, and I think you indicated how in fact it is a tax break to the consumer. I would like you to comment on that, if you have the opportunity to do so in the next couple of moments.

Would you also respond to Miss Martel's comment about how one member of a family who is a poor driver effectively punishes all members, how you feel this legislation will address that and how that will be remedied by the proposed legislation. I will quite simply share with Miss Martel that it has been a little bit of an injustice. Would you like to address those two, if not other issues, from Miss Martel's comment, but certainly those two.

Mr Liddle: The first question, again, was in regard to the reduction in premium tax and the passing back of that?

Mr McClelland: Yes, the requirement that you have under the proposed regulations to provide that estimate to the commission, commissioner and so forth and how that will impact not your company, but rather the consumer.

Mr Liddle: It will impact the consumer by holding—there will be no rate increase to our policyholders, on average, taking that into account.

1010

Mr McClelland: The other one was—

Mr Liddle: —the excluded. As you are aware, the act provides a provision to exclude drivers in a household from a particular policy and this should make insurance more available to those households at a more reasonable cost. This is a positive aspect of the legislation, as I see it, because it will make the insurance more available.

Ms Oddie Munro: I am just wondering if you can give me a—you talked about keeping the rates, or at least making sure there is sufficient financial remuneration back to you to cover the cost. Looking at the current system and the litigation costs incurred by insurance adjustors' companies, what proportion of the cost do you think that was? You talked about claims, for example, being the length of time—in a sense, whose fault is that? Was it because the insurance companies were fighting to delay costs or was it because the lawyers representing the victims were not willing to settle? I would just like to get a better handle on the litigation costs on both sides.

Mr Liddle: As far as the cost is concerned, there was evidence presented before the board that indicated that legal costs accounted for 30 per cent to 35 per cent of bodily injury claims. My experience in our own company would indicate that that is our experience as well. I do not think that we can blame either the legal profession or the insurance companies. It is the system that we have that is at fault.

Ms Oddie Munro: In the current system, to whom do you report? Or who currently gives the enforcement, or at least portrays that enforcement role? Someone must be to blame and I am just wondering who your watchdog is currently as far as fair litigation treatment from the insurance point of view is concerned.

Mr Liddle: Can you rephrase that?

Ms Oddie Munro: In making a ruling currently, where do the rules come from, in your opinion?

Mr Liddle: The rules are part of the justice system that we have here in Ontario and we are just abiding by those rules.

Ms Oddie Munro: You do not think, then, that the justice system is necessarily fair as it relates to the role of the insurance companies?

Mr Liddle: I think there are certainly inefficiencies in it when you compare that to the system that is proposed.

The Chair: I am going to have to interrupt at that point. Thank you for your presentation.

I will ask a general question. Can the audience in the back hear? No? Okay, we are going to try to rectify that situation by moving something around. I will rephrase the question. Is there any way to rectify that situation from a speaker point of view?

Is Mr George Maroosis here? I had a gentleman that was supposed to be—oh, wait a minute. We have someone coming forward. Mr Maroosis?

Mr Taylor: No, Mr Taylor.

The Chair: Mr Taylor, come on forward.

Mr Taylor: I am never called twice.

The Chair: You are never called late for dinner?

Mr Taylor: That is right. I have proved the point, too.

The Chair: Sir, the committee is yours for the next 15 minutes. Would you just identify yourself and allow seven to eight minutes for your comments and allow some time for some questions, answers and discussions. Please proceed.

INCO/FALCONBRIDGE PENSIONERS

Mr Taylor: I appreciate this opportunity. I really do not want to go into to—I had some language on why I did not submit a brief to be on this agenda. I had no knowledge that that was the route to take. In fairness to you I appreciate maybe, if I am going to cause you a late lunch, I am going to apologize.

The Chair: We can stand it.

Mr Taylor: My name is Tom Taylor and I am an executive officer of the Inco seniors. I am also associated with a Falconbridge senior group and a number of groups of seniors in the area. I am not suggesting that I am a spokesman for them all, but I certainly know them and represent them and I would like you to hear what we have to say on this legislation.

As we all know, this meeting is dealing with legislation which is before the Ontario Parliament which will seriously impair and restrict the rights of an innocent victim injured in a motor vehicle accident here in Ontario. The hope of this Liberal government is to get this legislation in place by March 1990, and we cannot see what all the rush is all about. When in our history in this province has the government come out and pleaded the case of a corporation? If the insurance companies were doing this, the whole of the driving population would be up in arms. It is a role that we cannot understand our provincial government taking.

If this legislation is passed, a person will be taking a financial risk to even ride in an automobile, let alone be the driver of it. The limits are endless, but to a senior the importance is paramount. As we see it, the issues are: (a) nothing for pain and suffering and (b) we seniors are not earning a living, so loss of wages is not a question. If I am wrong in that, if everybody gets \$450, then we are going to be opening up a guy out of work taking his car and smashing into somebody and getting \$450 a week while he is recuperating, and you do not really need a job in that case.

Loss is not the question; long-term injury resulting in deteriorated lifestyle is. When you are married and have been together for 37 or 40 years, to lose your partner is a very traumatic situation. We have cases of a wife being hurt and subsequently the husband becoming very seriously ill and passing on. So traumatic injury to one is an injury to both. That is something you have to discover, and this act would certainly take away any rights of a person to gain some compensation in that direction.

Broken bones, scarring and all of these things are very serious to us. This is one of the reasons for carrying insurance. We have been carrying insurance all our lives.

I have been driving since 1946, never had an accident, and I have only made two claims to my—three, excuse me. I had a small fire in my dashboard and I replaced two windshields. That is some 40-odd years of driving. My insurance company is very happy I am a member.

This is one of the reasons for carrying insurance, as I say, and the actuaries of the companies have already written in these costs, as you well know. When the courts were issuing new million-dollar claims to people, the insurance companies decided that they would raise the ante of the cost of insurance because so many big settlements were being made. Our insurance people called us in and said, "You're going to have to buy \$1 million worth of insurance because that's the kind of insurance you've got to carry." That was actuarially written in. My insurance doubled, and you want me to start at the starting line now, with that already written in, and say that insurance is going to be cheaper. It just does not make sense.

We seniors are very fragile in health. Whether anybody appreciates it or not, as you get older you are not as tough as you used to be. And any major accident results in emotional and psychological injury. Depression sets in in married persons. Both parties suffer. We both suffer the depression and shock anxiety.

Although someone said a wage earner can recover \$450, as I said, we do not see any compensation for us in that direction. The senior will receive no compensation whatsoever. We feel that we were not considered in this legislation and we want you to reconsider what you are doing to the seniors in that direction.

The facts are, an innocent victim is limited very drastically in what he or she can receive, regardless of who caused the accident. We see this as a regressive step, and the rewards to the bad driver, or at least the driver who causes the accident—he does not necessarily have to be a bad driver, but if he is the cause of the accident, he has the responsibility of taking care of the injured party, it seems to me.

1020

British Columbia, Saskatchewan and Manitoba limit the right to sue, but accident benefits are higher and properly compensate the victim. I am not an authority on those three particular kinds of insurance, but you people are. It seems

to me that legislation protects what we are talking about as seniors.

The insurance companies are the only ones that benefit from these savings. If you can tell me where someone else is benefiting, I would be glad to listen. You have talked about holding down the rates in 1990, but what about 1991? We know the record of the insurance companies in raising rates.

To recover these savings at the expense of the injured is a crime; we really believe it is criminal. It is the wrong approach, and the greater amount of moneys paid out by the insurance companies is not necessarily to people injured in accidents. The greater cost is the repair and replacement of automobiles. Lately, Toronto just wrote off all the automobile insurances, and it was not because people were getting killed in cars, it was because so many cars were being smashed.

I want to bring to your attention what we think is one of the major things. Someone somewhere has to talk about the quality of the product we are driving. When we first saw the Volkswagen Beetle on our roads in 1947, we all wondered how it would survive. It was the smallest thing in sight. Then they brought in the Mini Minor from England and those guys did not have a prayer. Every one you saw in the junkyard was a total wreck and most everyone in them was killed. The car was a write-off and subsequently the insurance company had to pay for it.

At that point in our auto history, most cars and small trucks had a special safety quality built in. Do you remember those days when bumpers matched, and if your bumper did not match it had to have a bumper bracket and it had to be supported and all of those things, so that you could hit a wall at 15 miles an hour and bounce back and nothing would happen to the automobile? Now with the front-end-drive cars, all of their steering mechanism and all of their support system are in the front end, and most accidents happen in the front end. That is where the major costs are to the insurance companies.

As we saw with the advent of the Japanese cars—check back in the records—the raises in insurance took place when the Japanese car hit the market here in Canada and elsewhere. We saw smaller cars coming in with plastic bumpers and front-wheel drive, which is a more unstable car in the winter areas. We heard the insurance person talking about that kind of thing, where he lost money in automobile insurance to the point that they will not write insurance for automobiles because that is where it is.

What is happening is, and this is on record, an impact of over five miles an hour—imagine, gentlemen and ladies—a five-mile-an-hour bump and you have got \$1,400 to \$2,400 damage to the automobile. That is impossible. If the unibody is damaged, there is a write-off, if they cannot take it in and get it straightened. All of the power of the car is written into the wrinkles of the steel, and if it falls out of shape, it loses its safety and you have to take it off the road.

What kind of prices are they talking about? You are talking about anywhere from \$7,000 to \$37,000 write-off. And you want us to support that kind of an idea? I really and truly believe that we have to talk about the safety of the automobile and the product and then we are going to design an insurance policy to protect the product.

I am not talking about selling General Motors half-ton trucks or Ford half-ton trucks or Dodge half-ton trucks, but check the record of the half-ton trucks: each and every one of them is fully framed, each of them has solid brackets and can hit a wall at 15 miles an hour. If you check the record of how many are on the road, they last almost 10 years and then they are still in very good shape. If everyone was driving half-ton trucks—and that is not what I am advocating; I am just asking you to look at the product. They are fully framed. If you get a hit from the side the person inside the cab is protected, and that sort of thing takes place.

I know I am over my time. At any rate, take a look at the Crown Victoria, which is an automobile made here in Canada. It has full frame, it is high, its bumper matches the bumper of any automobile or truck, a half-ton truck at least. But check the record of those cars and you will find that they are safer to drive. They have rear-wheel drive and in an icy condition they are easily handled. Check the records of those small cars with front-wheel drive. Almost every accident you can read of in the newspaper is one where the car swerved from one side of the road to the other into oncoming traffic. Basically, they are an unstable car for Ontario in the winter weather.

So there is a better way to cut insurance rates, we feel. You can cut those costs by raising the standard and quality of the cars and not by this method that is being proposed.

I think this group should take back a message that this legislation has to go back to the drawing board, that it needs more work and a lot more study and that this is very unfair legislation of the very first order. We think it is an extension of the Young Offenders Act in the sense that it protects

the perpetrator of the crime rather than the victim. We see all kinds of abuse coming into effect for the guy who does not have limits any more. We all know that the most important thing is the discipline of limits, and you are taking away the limits for the man who does not give a damn for anyone on the streets or anywhere else. Just think about that.

I could go into a long story about the trucks in this city. We are getting mashed to death by great huge monsters, and the legislation of the province has now added another seven feet to these things. We think of that beautiful young Toronto athlete who was crushed on Highway 401 by a truck that just ground him into hamburger. Really, that is something to consider.

That is about all I have to say.

Mr Kormos: This is only the beginning. Don McKay, general manager of the Facility Association—and Mr Justice Osborne agrees with him—says that if this legislation passes, senior citizens like yourself and like the people in your group is going to be denied insurance and you are going to be forced into Facility Association, not because you are bad drivers but because you do not fit the model of what the insurance companies want. You are going to be paying \$2,000, \$3,000 and \$4,000 a year in insurance. They are going to be gouging you like drivers have never been gouged before. That is what is going to happen.

Miss Martel: Mr Taylor, you talked about holding rates down and the government says this is going to happen in 1990, but what about 1991? I remind you of what they said in 1987 about, "We have a specific plan," and you know what happened there.

Second, just take a look at the breaks the government is giving the insurance industry by not having to pay the three per cent premium tax, by not having to pay the OHIP: a windfall of about \$140 million. You would think with that kind of gift we could expect our insurance premiums to go down, but you can bet on your life that they will not.

Mrs LeBourdais: One of my main concerns in this legislation is for seniors, because I have a large number of seniors in my riding. The calls I have been getting from them concern the rising premium costs. They do not feel that, on fixed incomes and in many cases on limited incomes, they can afford them. We also know that if a senior loses the right to drive because he cannot afford the premium cost, in many cases that affects many other seniors since one acts as the driver for many in the community. I think—

[Failure of sound system]

1030

Ms Parrish: —in the accident, but the no-fault benefits do allow spouses and dependents to recover if, for example, their psychological depression is directly related to an injury that was done, say, to their husband or their wife or their child or whomever. So there is recovery under those situations.

The Chair: Thank you very much for your presentation.

Mr Marosis, is he here? No. Mr Mantello? Were you the individual I spoke to who wanted to come in at 12:15 to 12:30? Fine. For the next 15 minutes the committee time is yours. You might just identify yourself for the committee's benefit.

FRANK MANTELLO

Mr Mantello: My name is Frank Mantello. I am a lawyer practising in Sault Ste Marie. Thank you very much for allowing me to speak here today.

As I have indicated, I basically agree with and support the no-fault legislation in basic principle. I have some very basic and a few very major concerns, and those concerns are also based upon my own personal experience within the past year as my wife was injured in an automobile accident over in the state of Michigan.

I have not practised litigation for the last [Failure of sound system]. Consequently, up to the accident I have not been really very interested or very involved, but that accident has caused me to get involved in the principle of no-fault. I was very concerned when the no-fault discussion started because of that personal involvement of mine and I would like to just go through that briefly.

My American attorney advised me that under the no-fault principle I would probably have to look to my own insurer. My wife was a passenger in my daughter's car and they were hit head on by a drunk driver. That happened on 30 December 1988. From 30 December 1988 it took me until March to finally establish to my insurance company, which is Western Assurance, that it was liable to me or responsible to me for my wife's personal injuries. Up to that time I was involved with my daughter's insurer, the Economical, which insisted that it was supposed to pay me.

Having to admit that I was a bit lazy on the subject, I just assumed that my insurance company would know its business and it would look after it. I asked my local agent finally to write to my company and get a legal opinion as to

who was responsible to me, because I had two adjusters calling me, the Economical wanting to pay me and myself in doubt as to whether it was proper that it should pay me.

Also, what transpired is that in Michigan no-fault, as you probably know, the insurers who sell insurance in the state of Michigan have to file a certificate of compliance with the state, being bound to pay the benefits according to the Michigan statutes, which, as you know, are substantially different and were different at that time.

What finally happened? I finally had to go to Toronto. I had to do all my own research. I finally had to go to Economical and give it copies of the three key cases in Ontario that established that. To my dismay, in all the writings I have read and all the discussions I have heard, I have never once heard this case identified. Given that we have the border cities that we have in Ontario, I would imagine there are quite a few cases involved. For the committee's benefit, that case is MacDonald vs Travellers Indemnity of Canada. I have the three citations here. I made copies if the committee would be pleased to have them.

The first case in 1984 established at a court of appeal that the insurance companies in Ontario that have filed certificates of compliance must abide by the Michigan law.

The second case was before Mr Justice Osler on 15 July 1987, where he then dealt with that case and went through all the various personal injuries and made his judgement, allowing what benefits were justified.

While all this was going on I telephoned my insurance company, its chief adjuster Mr Rodriguez in Pickering, because at this point I had been in touch at that very time with Western. I went to Toronto specifically, brought cases to the Economical to show it that it did not owe me a nickel and brought cases to the Western Assurance Co showing that it should be looking after me.

The day before I had that meeting with Mr Boyle, the chief claims adjuster of Western, I talked with Mr Rodriguez and asked him if he had the opportunity to call their own legal expert and check out my three citations and would he confirm that I was correct or that my research had been faulty. His reply was, "I cannot go running to a lawyer every time we get someone giving us a citation." I said, "I will fax you the three cases," and he said, "I do not have a fax machine." My comment was, just as an aside, "Your company is not only cheap but they have a stubborn adjuster."

As I said, I finally brought the cases to Mr Boyle, who acknowledged on 10 March that I was correct and I received a confirming letter. I was then called upon by their local adjuster who did not know the law either and was starting to argue with me that my wife was only entitled to \$140 a week for her lost wages, so I gave him a copy.

Mr Rodriguez made a very interesting comment to me also. He stated that their company is quite experienced. They sell insurance in three border cities, Windsor, Sarnia and Sault Ste Marie and every one of their cases involving Ontario claimants who were involved in accidents in the state of Michigan were all settled according to Ontario law. That really shocked me. I indicated to Mr Rodriguez, if that was the case, those settlements then were, in my opinion, an absolute mistake in law and those people have all been shortchanged. But I leave that up to the committee maybe to bring that forth to the powers that be to check that out. Because I can imagine, if that is the case, what the difference is between \$140 a week and the maximum in the state of Michigan, which is about \$2,700 a month, about \$675 a week.

On 19 April, I delivered all the forms that the insurance company wanted to the local adjuster with copies of my letters to the doctors at that point, to give them all the information that they wanted. I also requested that they look into this quickly. On 12 May, I delivered to the adjuster's office my account up to that date for my wife's lost wages, sent him her T-4 slip, asking that I please be reimbursed. Nothing happened.

1040

I went to Toronto again on 8 September. I went to Mr Boyle's office, gave him an updated letter with an account updated to 2 September, and at that point he called in his secretary and we embarked upon some kind of inquisition. He brought up about my wife being home twice when the adjuster called the prior year on a little accident she had, involving \$200 or \$300, and then told me she had been involved in three accidents, which was not the case. I asked them to check their records in their computer, which they did and confirmed with me that she had only been involved once.

They then raised the spectre that I was income-splitting, because I employ my wife, which is not the case. My wife has been employed with me for the past three years. I have a wage book. I filed income tax. The adjuster was told to come and check that wage book at my office. I told him it was available to him. Nothing

was done. They then told me that I had to have my wife's T-4 slip authenticated by the Department of National Revenue. I had never heard of such a thing, so I phoned Revenue Canada from Toronto and it said: "That is absurd. We have never done that. We have no intention of doing it."

To this date, I have received nothing. My wife has had two operations. She had very severe injuries to her face. She is now in the hands of a plastic surgeon down at Sunnybrook Medical Centre and our results have not been very good. She is in a very depressed state. But again, basically what I am saying is I really am happy that I am under the Michigan no-fault. I have a lawyer in the state of Michigan who is now suing the other driver as a third party.

But having studied the three MacDonald cases, my central concern and shock here is the one area of the act which limits the total compensation of \$500,000 to a 10-year limit, or 20 years minus the claimant's age, with a further cap of \$1,500 a month. On a reading of the MacDonald case, a very tragic case, a young lady from Willowdale who is a paraplegic—and thank God these accidents do not happen very often, but I am sure they happen on a continuing basis—just to give you some of the costs in that case, the judge—

The Chair: Can I ask you to wrap up in about a minute, which will allow about three minutes, about a minute for each of the parties?

Mr Mantello: The costs for the young MacDonald lady, just for nurses, and this is his judgement, this is an ongoing thing: \$176,555 a year, \$483 a day, they break down what the registered nurses get and the health aides; personal supplies a year, established at \$11,700; personal care equipment, \$8,000; modified van for transport, \$33,000; home renovations, \$61,000; maintenance costs, \$950 a month.

The other quick point I want to make is there has been a lot of discussion about the government giving up the right to subrogation. If you read the MacDonald case—and I have never heard this rebutted by the government, which is surprising and maybe indicates to me that the government does not know about the MacDonald case—Mr Justice Osler ruled that OHIP had no right to subrogation under that statute to recover some \$450,000 which it had expended. There is no right for OHIP for subrogation under the Michigan statute. The government has had no right to any subrogation since 1987. Yet I get correspondence from OHIP wanting me to advise it and keep it posted because of its rights of

subrogation. Again, what I am indicating is, it seems that the left hand does not know what the right hand is doing.

Getting back to the unreasonable types of delays I have had, I have had to now commence legal action to get my wife's personal injuries—I do not know how firm or how specific the wording of the legislation is, but hopefully it is going to be very specific and very onerous on the companies that embark on this.

Michigan has a very interesting case that happened. The claimant's lawyer had to claim for \$381, there was a long series of delays and the court awarded that \$381 and awarded attorney fees of \$8,000. I suppose maybe that awakened some of the insurance companies to embark on those types of unreasonable delays.

In summation, I think my experience with my insurance company indicates that my assumption was completely wrong, that the insurance companies do not look after their customers in a very good way, and I think that the precedent they have set in this indicates a very serious concern.

I will just point out one thing. Someone raised the question, was the cost of litigation one of the factors leading to this? Was that occasioned by delay by the insurance companies, etc?

We have a lawyer in Sault Ste Marie named Henry Lang, QC, who is an extremely good lawyer, very tough. When I did litigation, Mr Lang's favourite way was that he settled. He was always prepared to settle for judgement, for his claim plus his costs. That was his basis of settlement. He told me a few months ago about one specific company, that on four separate occasions with the same company he wrote to it attempting to settle the claim, setting forth his assessment of damages, and on each and every one of the four cases he was turned down. Subsequent to that, he decided to take the time, and he documented all of this on his letterhead, to write to the insurance company and say: "Look, this is what has happened. On four separate occasions and in every case where you refused to even discuss it, I had to go to court," and he recovered substantially more.

Again, I think that is an indication of what we are talking about, excessive legal costs. Those of us who do a little litigation, and I did for the years prior to quitting, all know about the settlements at the courtroom door where you were dragged and dragged.

Those are my comments.

The Chair: If you could leave copies of the cases that you cited with the clerk, he will make

sure they get distributed among the committee members.

Mr Mantello: Are there any questions?

The Chair: Your time has expired.
Richard Bazinet?

Clerk of the Committee: He is not here.

The Chair: From the Sudbury District Law Association, is Mr Hennessy here?

Mr Hennessy: Yes.

The Chair: Please come forward. I do not know whether we have a copy of your submission or whether you have copies for the clerk. If not, we can—

Mr Hennessy: I do have copies for the clerk and for the committee. I regret not being able to get those to you sooner.

The Chair: We have half an hour for your presentation. If I could suggest 15 minutes for the presentation and to allow 15 minutes for some questions and comments, it would be most appreciated. Please proceed.

1050

SUDBURY DISTRICT LAW ASSOCIATION

Mr Hennessy: May I start by saying welcome to Sudbury. We are pleased to see you here. We are glad you could make it. We appreciate the opportunity to address you and to bring to you, face to face, some very troubling concerns of the association that I represent.

A few comments in summary first: The Sudbury District Law Association, after a fair bit of consideration and informed discussion of the terms of this bill, does endorse those provisions which improve accident benefits, or no-fault benefits, to those injured in auto accidents.

We also say that the provisions which eliminate or drastically reduce the rights of innocent victims of auto accidents ought to be condemned and vigorously opposed; specifically, those provisions which would eliminate or drastically reduce the right to be compensated for full economic and wage loss and the right to be compensated for pain, suffering and inconvenience.

There are two schools of thought among our members concerning recommendations for changes to this bill.

The first school of thought advocates starting fresh and abandoning the concept of a combined no-fault threshold system and instead encourages reform along the lines recommended by the Osborne inquiry.

The other school of thought, perhaps more pragmatically, urges the following amendments as minimum changes to make the bill acceptable: (1) Retain the right to full economic recovery for innocent victims of auto accidents; (2) retain the right for compensation for pain and suffering for all innocent victims who sustain serious injury, even though it may not be permanent, and (3) retain the right of those suffering mental or psychological injuries to be compensated in the same manner as those suffering from physical injuries.

I hope the committee will note here that I have been talking about retaining the right to be compensated. We are not talking about the right to be sued or to sue. Nobody wants lawsuits. What the people of this province want, I believe, is a right to be compensated when they have been injured.

A little bit about our association: The Sudbury District Law Association is a voluntary association, statutorily recognized, and is comprised of virtually all of the lawyers in the Sudbury region, approximately 160 in number. This includes lawyers not only in private practice but those employed by the crown, local municipalities, public institutions and local businesses. It also includes lawyers who practise, as you may well imagine, in a wide variety of areas. We have but a minority of our members who practise in the personal injury field and a smaller minority yet who make this field a significant part of their practice, and yet it was by unanimous resolution at a general membership meeting called to deal with these issues that the association opposed those portions of the bill which deny full and fair compensation to innocent victims of auto accidents.

I can say that in my 11-year experience with the association no other issue, legislative or otherwise, has prompted such widespread and intense response by our members. There are many who believe that our group has a civic duty to stand up and speak out against the bill despite the unwarranted criticism that we are motivated solely by the economic interests of a portion of our members.

We acknowledge up front that some lawyers will be unfavourably affected if this bill passes without amendment. However, the opposition to this bill encompasses a much broader group than those practising in the personal injury field. To those who would criticize lawyers for taking a stand publicly, we ask, is the public interest served by our silence? The answer must be a resounding no, for at least two reasons.

First, with an issue that has as many complex facets, lawyers are among a small minority who can make an informed contribution. We cannot afford the luxury of sitting back and hoping that others who are knowledgeable, yet untainted by self-interest, will point out the fundamental inequities of the bill.

Second, and at least as important, those who stand to lose the most do not have an effective voice in this public debate and it is on their behalf that we speak. Here we are referring to the innocent victims of future car accidents. Only after accidents have happened can they be identified, and only after they have been identified can they be organized into an effective voice. These people are not known to us now and there is no organization to stand up for future auto accident victims.

It is for these reasons we state with confidence that the principal reason for our opposition to this bill is the firm and collective belief that those provisions which abolish rights to fair compensation for innocent victims are not justifiable, nor are they consistent, in our view, with the public will.

Clearly the most significant concerns that we have deal with the elimination of the right to full compensation for wage and economic loss for innocent victims of car accidents and the elimination of the right to compensation for pain and suffering and inconvenience for these same victims.

We are led to believe that these measures are taken to moderate auto insurance premiums and that this tradeoff is both in the public interest and consistent with the public will. To this we respond that the moderative impact on premiums is in part illusory, in part a shell game, and to the extent insurance premiums are moderated, the tradeoffs are neither in the public interest nor, in our view, consistent with the public will.

Let me first deal with premiums. From an arithmetic point of view, the concept is probably sound. You cut back benefits, the money going out to the insureds or innocent victims, and the line can be held on premiums, money coming into insurers. If the goal is to hold the line on premiums, this policy has the appearance of achieving the goal. The illusion comes into play when those who are aware that they will be denied recovery for full economic loss purchase additional insurance to give them protection that they had before the bill. Will there be a moderative effect on the total premiums that these individuals have to pay? Not likely.

It also raises the issue of what insurance will be available to those who hope to preserve the same rights to full economic recovery that they now possess. In the insurance market today, we are not aware of any products that provide for 100 per cent recovery based on disability. Further, most individual disability policies are rated based on the health of the applicant. For those with poor health, insuring against economic loss may be prohibitively expensive.

Then some comments on tradeoffs: To the extent that there are true savings on premiums, we firmly believe that the tradeoffs involved are not in the public interest nor consistent with the public will. It is not in the public interest because it removes a potential deterrent factor for careless driving; it is not in the public interest because it unjustifiably exposes some individuals to severe economic hardship in situations where they were injured without any fault of their own; and it is not in the public interest because for innocent victims the compensation for damage to cars is given a higher priority than compensation for wage loss.

This last point deserves some expansion. The bill does not arbitrarily limit by percentage, nor by amount, what can be recovered for damage to cars. If one is without fault, the recovery is complete for property damage. This is, I suppose, as it should be. But if one believes that there is a crisis with auto insurance premiums, is it not better to limit recovery for property damage than to limit the recovery for wage loss?

Indeed, if, as we suspect, although we cannot be sure, more insurance dollars are paid out in respect of property damage—that is, fixing broken cars—than is paid out for personal injuries—that is, payments for pain and suffering and wage loss—a fixed percentage reduction on property damage payouts would have a more beneficial impact on premiums than a similar-sized reduction in personal injury payouts.

We leave it for you to imagine how voters would respond to such a proposal; that is, a proposal that saw property damage payments limited to some reduced percentage of the repairs—for example, 80 per cent of the cost of repairs—or a proposal that arbitrarily limited the amount that could be recovered for property damage, say, to \$5,000. More startling perhaps, how about a proposal that allowed for compensation of car repairs independent of who was at fault?

We do not believe that the public will support a policy that treats payments to fix damaged cars more favourably than payments to replace lost

wages for innocent victims. Surely the public would acknowledge that the right to full compensation of wage loss for innocent victims is a valid objective in setting auto insurance policies.

A couple of further points here: On the issue of eliminating the right to compensation for pain and suffering for all but the most catastrophically injured, we do not believe that this proposal is supported by the public will. From our perspective, this concept enjoys support from but a single group, the insurance industry. We cannot imagine that other individuals, or groups for that matter, have appeared before this committee saying words to the effect, "If I am injured in a car accident that occurred without any fault of mine, I would prefer not to be compensated for my pain and suffering."

1100

Allowing for the moment that the majority of this committee is committed to some form of threshold system, we urge you to consider a broader scope of those eligible for compensation. It is understandable perhaps to be tempted to dispense with the truly minor claims for pain and suffering. With these might go the claims that some insurers suggest are settled on a nuisance value, perhaps because the cost of defending the claim may be more expensive than a payment. To move from that position to one that has compensation for those suffering "permanent severe" injuries is unjustifiable. On what logical ground can one make a distinction as to entitlement between those injuries that are only "severe" and those that are "permanent severe"?

We believe that this is not so much a threshold system as a barrier. Surely whatever reasons there may be for compensating those with permanent severe injuries apply with equal justification for those who suffer severe injuries. Again, our association would prefer to see all innocent victims compensated, but if there is to be some threshold as opposed to a barrier, common decency requires that those suffering severe injuries not be excluded from compensation.

By the same token, there does not appear to be a logical reason for excluding from compensation those whose injuries are other than physical in nature. We ask, is this not tantamount to denying the validity or even the existence of the disability? We believe that the distinction contained in the bill between mental and physical disabilities is not logical, justifiable or fair.

In conclusion, again I express my appreciation to address the committee. We—and I say we, our association—want to believe that this process, the

legislative committee process, works. We will know that the legislative committee process works if it responds to the concerns that I think are being raised by many in the province, that compensation for full wage loss and for pain and suffering for the severely injured ought to be in place in this bill.

Thank you for your attention and I am happy to answer your questions as best as I am able.

Mr Kormos: No-fault benefits, there is a real lot of confusion about this phrase "no-fault," and the Liberals are trying to come across as if they have created something brand new. As I understand it, no-fault benefits have been around in this province for over 10 years now and what that meant was that, regardless of fault, injured people were paid certain things.

Mr Hennessy: That is correct.

Mr Kormos: Can you tell us a little bit about that?

Mr Hennessy: As best as I am able: No-fault benefits have been in place, at least as far as I can recall, as long as I have been a lawyer, which is 10 years. It is a sensible proposition to get injured people some quick recovery, not full-scale recovery but some quick recovery so that, without going into who was at fault or who was not at fault, the burdens can be ameliorated or improved. That is why we support no-fault benefits.

Unfortunately, the rate for replacement income was limited to \$140 per week, as you all well know. That limit, I believe, was set in 1978 or 1979 and it has not been raised in the last 10 years. We see the increase in accident benefits, or no-fault benefits, as proposed by this legislation as largely catching up with inflation. Admittedly it goes a little bit beyond that, but we support the idea of no-fault benefits.

Mr Kormos: So there is nothing new in this legislation when it comes to no-fault; what is new here is the restriction, the serious restriction, on the right of innocent victims to be compensated for pain and suffering.

Mr Hennessy: And to have their rights for full economic recovery taken away as well, that is what is new.

Mr Kormos: Incredible.

Miss Martel: I just want to go back to the point you raise, that surely the public would acknowledge that the right to full compensation of wage loss for innocent victims is a valid objective in setting auto insurance policies. I have to go back to the fact that when people get hurt their mortgage payments, the food they buy,

the car payments they have do not decrease because they have had an accident, so why the heck should they not at least be covered for full replacement so they make the kind of payments they had to make before they were hurt?

I point out, again, similar legislation for disabled people—in this case workers' compensation—where the minister ranted and raved about how we had to have a more equitable system, how we had to raise the limits so that people who were hurt come as close to their income that they had lost as possible. Yet here we have the same government a year later trying to tell the public that this \$450 maximum as a wonderful thing and it should accept that. By the same token, it is not even indexed. But this is a great, new and wonderful advance we are making.

I just think it is complete hypocrisy to hear what I heard last year about this same time on workers' compensation and hear this kind of thing when both concern disabled people who really need full income replacement.

Mr Runciman: Mr Hennessy, you mention a minority of your 160 members in the personal injury field. Basically, how many are in that end of it?

Mr Hennessy: I would be taking a stab at the following numbers: of the 160 members, there might be 40 or 45 who do—

Mr Runciman: Personal injury.

Mr Hennessy: —personal injury work of any kind, and there might be a handful of those—my guess is maybe 10—who would make a significant part of their practice personal injury work.

Mr Runciman: What about yourself?

Mr Hennessy: I fall somewhere in between. It might represent 30 per cent of my practice.

Mr Runciman: What is your experience with respect to cases that you handled going through the court system? In terms of percentages, are most of these resolved out of court? What has been your experience?

Mr Hennessy: My experience is that the overwhelming—and when I say overwhelming I am speaking about over 90 per cent—do not go to trial. The court process may be initiated simply to protect time limits or as an inducement to a settlement, but the overwhelming proportion of cases are settled without resorting to the court process. It is something that I think the public is generally not aware of. Indeed, I am not sure this serves our association any particular benefit, but I can tell you my own experience is that the majority of personal injury cases that I work on

are settled at the insurance adjuster stage without having to deal with another lawyer.

Mr Runciman: You mentioned here about reducing insurance premiums as one of the major purposes behind this bill, but I think, as Ralph Nader pointed out to us in testimony, that is like someone who wants to lose weight cutting off an arm. I do not think too many of us are prepared to do that. In fact, in reality it is not going to cost us any less when you factor in the tax breaks, the other costs that are associated with it.

Just one final question: In reference to the two proposals you have made—one in the Osborne, and then you have something that you consider more pragmatic—in essence what are you saying here? Do away with the threshold? Is that what you are saying? I am not sure. You are talking about the retention of economic recovery, pain and suffering and mental and psychological injuries. Do you still see some sort of threshold no-fault as being acceptable?

Mr Hennessy: Our association is divided. The majority—I do not know; I will not try to break it down, but there is a strong segment of our group that says thresholds have no place. The reason they say thresholds have no place is that there is a positive value to compensating innocent people for their pain and suffering, even if it is only \$1,000. For them, the payment of \$1,000 rights a wrong that was done and it also has the positive effect of putting that case to an end.

The alternative is if you give that person no compensation for pain and suffering, that elbow that he banged up and bruised up just lingers; it is a sore point with him. They will always remember that they were an innocent victim, they got banged up. It was not serious but there was no justice done. So there are some of our group who would say, "Forget the threshold." The rest of our group, I say more pragmatically, believe that it is not likely that the government will respond by starting fresh.

Mr Runciman: Given the Liberal majority.

Mr Hennessy: Given the Liberal majority. Maybe there are some valid reasons for introducing a threshold. We are prepared to acknowledge that there may be valid reasons for some threshold, but the way it is defined here it is not a threshold, it is a barrier.

1110

Ms Oddie Munro: Just a short question: I think all of us believe that the legal profession has a very real role to play in terms of due process and justice. However, in reading the literature it has become quite clear that many victims did not

seek access to legal representation, due either to the costs of litigation or the fact that they settled earlier. Since your members obviously spent a great deal of time soul-searching, I am just wondering whether you felt that you were able to touch appropriately the vast numbers of people you wanted to represent or how you felt they were dealt with.

Mr Hennessy: I am not sure I fully understood the question part, but—

Ms Oddie Munro: Not all accident victims are represented by the legal profession.

Mr Hennessy: Correct.

Ms Oddie Munro: I am just wondering how you viewed the access to the legal profession for all injured victims and why they did not access.

Mr Hennessy: That is something I have struggled with. I wonder why some auto accident victims who are injured do not pick up the phone and call a lawyer, and I do not have a good answer for that. It may be that the perception is that lawyers are expensive and that it is a complicating aspect of their life and they would prefer not to deal with lawyers. That is something our profession has to come to grips with independent of the auto insurance issue, but I can tell you that these perceptions are really, in my view, not an accurate reflection of what takes place.

The reason why it is not expensive is that the standard industry practice among lawyers is not to ask for money up front from a client who wants to pursue a personal injury case. In fact, almost without exception lawyers only collect their paycheque when the injured victim collects his paycheque, so it does not cost the client who is injured any out-of-pocket money or upfront money; and as you may appreciate, typically lawyers' fees are based on the value of the award or the settlement. So there is no hurdle based on legal cost to the clients. I hope I have answered your question.

Ms Oddie Munro: Under the tort system—since I am not a lawyer, I do not know—did you represent clients on the basis of general compensation or on the rights of wrongful injury or fault? I like your recommendation of retaining the right for compensation, I understand what you are talking about, but I am just wondering whether it was always on the basis of fault that you were pleading your case, if that is the way the justice system is set up, or whether it was the right to compensation in general.

Mr Hennessy: No. We have worked for hundreds of years within a system that is based on

fault, and that system says, "If you're innocent, you can collect; if you're at fault, you can't collect." Now, within those black-and-white scenarios there is grey. By that I mean that if you are 50 per cent at fault and 50 per cent not at fault, you can collect that 50 per cent that you are not at fault.

But to answer your question directly, yes, the whole system for compensation on injuries and wage loss, apart from the no-fault benefits, is geared to fault, which we think ought to be retained as it is for things other than car accidents; for instance, boat accidents. Even if this legislation is passed without amendment, people who are injured in boat accidents will still be able to make a claim for compensation and they will be compensated if they are not at fault.

Mr J. B. Nixon: It sounds to me like you are advocating the use of a contingency fee. You are talking about a percentage of recovery being the basis of the fee. The client does not have to give you a retainer, I take it, or pay for disbursements. You must be an advocate of contingency fees.

Mr Hennessy: Indeed I am, although I think it is a separate issue.

Mr J. B. Nixon: It is a separate issue, but you certainly were describing the litigation process in that context.

Mr Hennessy: Yes.

Mr J. B. Nixon: You talk about the majority of cases being settled without resort to the court process, in terms of the client, through a lawyer, dealing with an insurance company adjuster.

Mr Hennessy: That was my personal experience.

Mr J. B. Nixon: Yes, I understand that is your personal experience. You know there is nothing under the legislation that is being proposed which prohibits that from occurring now.

You know, I hope, that the client, the injured victim, with or without a lawyer, innocent or guilty, or not able to find someone else at fault—perhaps the victim of a rock slide or treacherous driving conditions that we have heard about existing in the north—can go to mediation. If he is dissatisfied with the mediation, he can go to arbitration or, with his lawyer, go to court. He can go to arbitration and if he is dissatisfied with arbitration, he can appeal that to the director or, with his lawyer, go to court.

So I would suggest to you that in fact, from the litigators' point of view, representing the interests of an injured victim, they have more opportunities to go to court, more opportunities

to protect their client's interests in these matters, from a process point of view.

Mr Hennessy: It may be that lawyers will have new opportunities for work. That is not the reason why I came here before this committee, to take time out of my day on a volunteer basis without getting compensated.

Mr Runciman: Good for you.

Mr J. B. Nixon: That is not what I am suggesting to you. I am suggesting to you that you will have more opportunities to protect and represent your client's point of view.

Mr Hennessy: With respect, sir, I am not here, and I do not think it is relevant to say we are here, to protect lawyers' interests, to get work.

Mr J. B. Nixon: I am not disagreeing with you.

Mr Hennessy: I am here because there is a proposal on the table that will take away long-standing reasonable rights to compensation. We are really troubled. We want the members of the Legislature to understand that we are troubled.

Mr J. B. Nixon: I hear that very clearly. I am speaking specifically to the issue and the right of representation that you are talking about.

Mr Hennessy: We acknowledge that.

The Chair: Mr Ferraro has a point of either information or clarification, I am not sure which.

Mr Ferraro: Hopefully both. Mr Hennessy, thank you. On page 5 of your submission you make the assertion—and I understand it is qualified—about two thirds of the way down, "If as we suspect, more insurance dollars are paid out in respect of property damage (ie fixing broken cars) than is paid out for personal injuries," and then you go on. I want to point out to you that Justice Osborne looked at this in depth, on page 249 of his report. Your suspicion is wrong. Indeed substantially more money is paid out in claims for physical injury than for property damage.

If I may conclude, he takes the 10-year period from 1977 to 1986 and equalizes the period relative to 1981 dollars so he does not have to fool around with inflation. For example, in 1977 the loss per car for bodily injury was \$89; 10 years later the loss per car was \$161. I am not dealing with claims costs; I am just talking about loss per premium dollar essentially. The corresponding figure for property damage in 1977—and it has fluctuated up and down while bodily injury has steadily increased, which the chart will indicate—was \$68 and in 1986 it was \$60. So

indeed there is significantly much more money paid out for physical injury than property damage.

Mr Runciman: On a point of order, Mr Chairman: I wonder if the parliamentary assistant could also quote what Justice Osborne said about threshold no-fault.

Mr Ferraro: Only if I may quote what he said about public auto insurance too.

Mr Runciman: It will not bother me.

The Chair: Anyway, I am sure we will get into an extension of this debate later on. Thank you for your presentation. I appreciate it.

The next presenter is Pastor Mahood from the All Nations Church.

Mr Mahood: Do you wish copies of the submission?

The Chair: Please. If you have copies, the clerk will distribute them. You have 15 minutes for your presentation. If we could divide the time between verbal presentation and allowing some time for discussion, we would appreciate it. The committee is in your hands for the next 15 minutes.

1120

ALL NATIONS CHURCH

Mr Mahood: I would like to thank the committee for withholding these hearings until I could come back from my winter vacation. So thank you, and it is good to have you in Sudbury in the cold today.

I represent All Nations Church in Sudbury, which is part of the Baptist Convention of Ontario and Quebec. It is a constituency of approximately 250 families. It would be unfair to say that each one of these families would approve what I am about to share with you, but our board has approved in principle this particular document that we have before us today.

I have really only one point that I will make, and it is basically my personal point of interest. That has to do with the part of the legislation that deals with personal pain and mental anguish. I believe that the proposed Ontario motorist protection plan is a barbaric and inhumane piece of politically motivated legislation. It is barbaric in its refusal to recognize the reality of pain and suffering as a compensable loss and inhumane in that it denies the existence of psychological trauma or at best reduces the impact of psychological injury to that of a cut finger.

Ontario has just begun to emerge from the darkness of relegating mental illness to being the responsibility of the mentally ill patient. This

legislation confirms the folklore and old wives' tales of yesteryear that psychological trauma is less real than or more controllable than explicit pain. Much of this antiquated attitude is found with regard to depression. "Just snap out of it" is a common expression told to the depressed. Those with nightmares, which often accompany many traumatic events, are labelled loonies. Please, Mr Peterson, do not send those of us entrusted with mental health issues back out into the desert from which we have fought long and hard by asserting that psychological trauma does not count or has no value, is not recognizable as valid or cannot be monetarily recompensed. I cannot see any benefit to this legislation as it stands.

Legislation must be primarily for people, not for politics or for profits. This is not legislation for people. In fact, it strikes at the very heart and takes away hope. We cannot live without hope. We recognize that money cannot replace a leg that is no longer functional, but money can at least make a person feel that justice has been served. For people to have hope there must be a course of action that can be taken so as to feel vindicated for damage done to the physical and psychological self. To remove the right to compensation relative to the severity of damage done is to remove hope, create despair and ultimately breed frustration. This is not legislation for people, especially when it appears that property damage will be treated more seriously than personal injury.

There is one other serious social repercussion to the proposed legislation. Simply put, it appears that no one will be held responsible for his actions while driving a car in Ontario. It is not my fault, it is not your fault, it is no-fault. Mr Peterson, life is simply not like that. For every effect there is a cause, and someone is always responsible for a cause. If you remove fault in its entirety, you will breed an attitude of "I don't care" which will lead to further negligence and even greater intolerance.

Perhaps just an extra line there at that point: To stop people from taking responsibility for anything is an important step in disenfranchising citizens from reality. As a people of Ontario, we must care and we must be responsible for our actions. I must feel that justice is being served. Please, sir, the sociological implications of this legislation are destructive and I am encouraging this committee and the government of Ontario to have the courage to admit that in its present form Bill 68 is not in the best interests of people and to

make the necessary amendments to restore hope and responsibility to the drivers of Ontario.

Ms Oddie Munro: Thank you very much for your presentation and your feelings about the state of the art as far as mental illness and definitions of psychology are concerned. I know you are a concerned person. I wonder if you have had a chance to look at the regulations and have followed the minister's introductory comments specifically on the aspect of psychological injury and trauma and compensation immediately on the no-fault side for people showing manifestation of psychological trauma or physiological manifestation, not necessarily physical as far as manifesting traits is concerned. I wonder if you also know that people who show psychological impairment also have the right to sue. I think you are right. We have come a long way, and it is my understanding that the bill and the regulations take that into account.

Second, I think that although the no-fault benefits are one aspect of the bill, we must not forget that the fault aspect will, we hope, be severe enough to deter bad drivers and that the protection plan, which includes Bill 68 along with the Ontario Insurance Commission, will see that enforcement is carried out.

Mr Runciman: I had hope for you, Lily, but I guess it got misplaced.

Ms Oddie Munro: I asked you two questions.

Mr Mahood: You did? I am sorry. It is my understanding of the reading of the material that we will be unable to define in mental terms what is serious, permanent disability. It is my understanding that someone who would suffer from continual mental trauma for a year would not receive compensation. It is my understanding that if I watch one of my daughters be killed in an accident—and I have constantly treated people who have suffered from the psychological trauma of that—I am not to receive compensation. That is my understanding of the legislation.

The Chair: Maybe just on a point of clarification, using the last minute that Mrs LeBourdais was going to take, Ms Parrish, could you clarify that?

Ms Parrish: Persons who, for example, see members of their family injured or killed are entitled to compensation under the no-fault benefits schedule, up to \$450-a-week income loss. In addition to that, they are also entitled to psychological counselling and so on. In addition of course, because the person who was killed passes the threshold, there would still be the lawsuit on behalf of the deceased person, his

estate, and there would also be a derivative claim under the Family Law Act.

The Chair: Mrs LeBourdais for 30 seconds then.

Mr LeBourdais: I think it is worth mentioning too that for a psychological injury there will still be the possibility of benefits, which will come very quickly. It is also worth mentioning that so often the litigation process, because of its length, would cause further depression and prevent compensation coming in quickly enough for an individual who had initial psychological injuries to begin some sort of rehabilitation. To wait two and three years with the stress and frustration of litigation I think would only aggravate further psychological problems.

Mr Runciman: Rev Mahood, it is good to have you here. I am what might be described as half-Baptist, which is like being almost pregnant. My dad was a Baptist. I am pleased and proud of the position you are taking on behalf of the people you represent.

I said this earlier—not in Sudbury but during the past week—that in my nine years as a legislator some of the testimony we have heard before this committee has perhaps been some of the most moving that I have heard in those nine years. It had quite an impact on me. I was hoping, and made a plea last week, that it would have a comparable impact on the members of the Liberal Party, but obviously that is not occurring. I had some hope for Ms Oddie Munro and a number of others, but listening to them all mouth the party line here today is quite disturbing, to say the least.

I agree with you that this legislation is going to impact especially on those less fortunate members of society: the poor, the elderly, the people whom you and your church deal with. It is regrettable. I have laid this on the doorstep of Premier Peterson, and that has offended some members of the governing party, but I believe it to be the case.

If we go back to 1987, when he made the promise that he had a specific plan to lower auto insurance rates, he had no such plan. He misled the electorate and I think we are paying the price now. We have paid the price for the past two and a half years with millions and millions of taxpayers' dollars going down the drain in wasted studies. The fact is that we are at the situation now where, in effect, we are having a significant loss of rights to improve the situation for the private insurance companies in this province. Again, I want to simply put that on the

record and laud you for the position you have taken.

Mr Kormos: I will not waste a lot of time praising you; I will join with Mr Runciman in that regard. It is praiseworthy that a pastor would recognize the impact in this case of, I guess, Caesar's law on the people he is charged with the care of. I should let you know that it is not particularly a matter of the committee waiting for you. The government did not want to have public committee hearings on this bill. It wanted to force this bill through without hearings before 20 December, which was the last day that the Legislature sat in 1989. It was only after some pressure was applied and some heated negotiations took place between House leaders that the government finally acquiesced to have committee hearings.

Then what happened last week? Down in Toronto the insurance industry is crying, it is moaning and groaning, as is its occupational trait, and it is talking about the big losses that it is suffering. For two days last week they had big, full-page ads in the *Toronto Sun* and darned near full-page ads in the *Toronto Star* and the *Globe and Mail*, which are expensive as all get out, somewhere between \$30,000 and \$40,000 a day—who really knows—but for two days. So they spent some \$60,000, \$70,000, \$80,000 worth of drivers' premium dollars on ads dumping all over the people who would dare to criticize this legislation, the people who would dare to point out that the legislation is grossly inadequate in terms of how it cares for people.

Pastor, I tell you this legislation is designed to create profits, no matter how cap in hand the insurance industry comes here. I have mentioned before that the demeanour of these insurance guys who come before this committee is very much like that of the fellow who is convicted of murdering both his parents and then begs for mercy to the judge because he is but an orphan. These insurance guys are coming before this committee saying: "We know we fouled up in the past. We know that we've been less than charitable and less than generous, but honest, just give us this. This is the last thing we'll ever ask from you." Quite frankly, if the government gives them this, they will not have to ask for anything any more because it will all be served to them on a silver platter.

Your comments are well taken. The psychological injury does not pass the threshold. People

will not be able to sue and seek compensation for the pain and suffering and the loss of enjoyment of life associated with psychological injury. Anybody who says that either does not know what he is talking about or is enunciating a deliberate falsehood.

The Chair: Pastor, thank you for your presentation.

I have Mr Ferraro on a point of clarification.

Mr Ferraro: I just want the record to show that it was always the intention of the government to hold public hearings, notwithstanding what some members of the committee may try to indicate. I will acknowledge, however, having said that, that it was our preference to have these hearings towards the end of last year as opposed to this year, but we always intended to have full public hearings.

Mr Kormos: How many? Three hours of hearings? Four?

Mr Mahood: Might I just say that whether or not it was the government's intention to ever have hearings, you have had hearings and for that you are to be commended.

Just on one minor point, if I could, Mr Chairman: It is just a flavour of what I sense happening more than anything else here, and that is now we no longer understand what it costs the individual person to be serviced by the health care industry. Now we are no longer going to be able to really get the kind of compensation back that we need for mental difficulties. I see the government just moving in a stream. Where the rest of the communities are going to user fees and making people assume responsibility for what they use, I see the current government moving in a different stream where we are no longer cognizant of what it really costs us as people.

The Chair: Thank you very much for your presentation.

I want to re-emphasize for the committee's benefit that checkout time is one o'clock and that the bus will be leaving here at 6:30 for the airline flight. I would suggest that when you check out, if you could bring your luggage down here, either in the corner or someplace, we will keep an eye on it or whatever. We have to be out by one o'clock. The committee stands recessed until 1:30.

The committee recessed at 1135.

AFTERNOON SITTING

The committee resumed at 1329.

The Chair: I am going to start by my clock, and it being 1:30, I welcome the County and District Law Presidents' Association, Mr O'Dea and Mr Brennan. Their presentation has been circulated—it is in the wine-coloured folder—as well as a two-page summary. We have a half an hour. I would suggest 15 minutes for comments, discussions and questions after your 15-minute presentation. Identify yourselves and please proceed.

COUNTY AND DISTRICT LAW
PRESIDENTS' ASSOCIATION

Mr O'Dea: My name is Mike O'Dea. I am from St Thomas, and Lloyd Brennan, to my right, is from Ottawa. David Lovell, the third member of our committee, was unable to be here today, and David is from Owen Sound. All three of us had a piece of the submission that is in front of you.

We are not going to review this word for word, we are going to highlight it. I am going to deal with some of the introductory remarks and Lloyd will deal with the meat and potatoes of our concerns.

Our association represents 6,500 lawyers throughout this province and our representation touches on all 46 judicial districts in the province, except for Metropolitan Toronto. Principally, our membership are generalists, but we do have specialists. We represent Ontarians of every nature and kind, their families, their businesses, their individuals; we represent factory workers, we represent doctors, we represent people in all aspects of the areas of practice of law. In our various meetings, we feel that we have a strong sense of how the public perceives the issues of justice and access to justice in this province, and we believe that the people of Ontario consider justice to be very important.

As long ago as 1983, our association passed resolutions and made recommendations for a streamlining of the court system by a merger of the Supreme Court and district court. As you are all well aware, over the past four and a half years the Attorney General (Mr Scott) of this province has studied the delivery of justice very extensively and has made some major recommendations in his reform package tabled before you last May. We have wholeheartedly supported the Attorney General's reforms, because we sense

that the reforms he has proposed and that we can support will in fact serve the public in our communities well.

Our public demands an efficient and cost-efficient court system, but as well, our public demands an access to justice that is still based on a fundamental principle of fairness and equity. Even though we have changed quite drastically over the last 10 to 15 years in relation to what justice is and how it is delivered, those fundamental principles have really never changed.

In addition to addressing our minds to the reforms of the court system and how justice is in fact delivered in this province, we have also had to touch from time to time on other issues that deal with specific laws, and one of those areas is tort reform. Most legal associations, including ours, have seen the need to improve the tort compensation system, and we have urged adoption of tort reforms which permit, and still permit, the fair and equitable delivery of justice to the public.

Our concern is the threshold. We have adopted and supported, as we see it, a more efficient, improved and revitalized court and acceptable reforms to the compensation system, yet the proposed provisions established by the threshold would effectively bar the public's access to the same reformed court. We find that not only to be inconsistent, but also unacceptable.

There are many positive changes that have occurred over the past five years in relation to the justice system, but again, the public still demands a basic minimum and that is a minimum of fairness and equity.

What Lloyd is going to take you through is, as I said, some of the meat and potatoes of our concerns arising out of the threshold and arising out of the impact on the access to the public by virtue of this threshold.

Mr Brennan: I do not propose to read through the rest of the paper but rather just to highlight it.

Under the heading "Risk and Justice," we go back really to the roots of this question of automobile insurance and the whole question of negligence law. In any modern society it is necessary to allocate losses that arise from risk. Any active society has activities which create risk. Certainly in this mining community we can think that there is a high risk involved with some of the work that is engaged in there.

One of the main creators of risk in our society over the last half century or so is the motor

vehicle, whether operated for pleasure or for economic return, and of course there is a very large trucking industry, and taxis and so on, which is dealt with by this question. What we have, to deal with that question of allocation of risk, is the law of negligence, and it has served us extremely well. It has served the common-law part of the world very well indeed for something over a couple of centuries.

To put it very simply, what it does, in the name of justice, is allocate the losses arising from irresponsible behaviour by putting the cost of the losses on the perpetrator, on the person who creates the risk. The law requires that Smith, the tortfeasor, must compensate Jones, the victim, for damage that Smith causes through his negligence, and that is where the concept comes from.

It is also important to recognize that in a free society, in the kind of democratic society that we want and have, the responsibility to each other is something that the law ought to keep in front of us. We ought to recognize and in fact emphasize from the government perspective the responsibility of each citizen to his neighbour.

The public sees an obligation to respect the neighbour's rights. If we do away with negligence law in the motor vehicle field, and that is what we fear this legislation will do, there is some serious risk of that sense of responsibility to the neighbour being diminished. We need to have a law that requires reasonable caution to avoid harming one's neighbours and that law must apply and be perceived not only in criminal sanctions but on the civil legal side.

The Ontario motorist protection plan proposes to remove the law of negligence except in the most serious cases, the catastrophic cases. It raises a barrier, not a threshold. It prevents most victims from seeking justice under that law of negligence.

A very brief history of insurance as it applies to motor vehicles: When motor vehicles became common, it was obvious to insurance companies that a great new field was opening to them. Vehicles can cause very serious injury, or sometimes not so serious, and loss when they are operated negligently. So operators needed liability insurance, and the industry responded with the motor vehicle policy as it has developed over many years.

It has changed very substantially over the years but its basic function, until the suggestion of the present legislation, is to provide the funds to satisfy a judgement for settlement in favour of a victim of a driver's negligence. The negligent

operator is obliged to make good the loss. To make it good, he carries liability insurance, and that is fundamental to the existing system.

Some years ago, quite properly, Ontario added no-fault coverage to the standard motor vehicle policy, and that was so that the person who was injured and unable to support himself or herself would have some immediate source of funds. That is an excellent idea and it has worked very well. But the level of no-fault benefits has not been increased with the passage of time as it ought to have been and, as Mr Justice Osborne recommends in his report, a reasonable level now is about \$450 per week for lost income.

That is a reasonable level of no-fault benefits if the purpose is to see that the victim of someone's negligence is not left with no resources in the short term. But it is clear, I think, from the Osborne report and from many studies done that the intention of doing away with the negligence obligation, that is, the obligation to be considerate of each other and to carry the loss, if your negligence causes loss, was certainly not contemplated by Mr Justice Osborne's report.

We came to the so-called insurance crisis in the early 1980s when insurers, with interest rates coming down to more reasonable levels, found themselves with the need to raise premiums. Indeed, they raised some premiums quite drastically and declined to cover a number of losses. So we had the insurance crisis.

The Slater task force dealt with that in part. The government correctly perceived that motor vehicle accident coverage should be looked at in detail and commissioned Justice Osborne to do that. His report identifies a number of desirable reforms in the system. Some of those reforms are already in place in the Courts of Justice Act and the Evidence Act, and some of them are embodied in the OMPP legislation. Those reforms are supported by all who are familiar with motor vehicle liability and motor vehicle insurance.

1340

The report rejects the drastic change, however, that is proposed in the motorist protection bill. It rejects a threshold system or a smart no-fault system, as was urged on the government by the insurance industry. It rejects such a system because it would not serve the avowed purposes of the government: It will not provide insurance at reasonable rates; it will not hold insurance rates down; it will not serve the public interest.

To quote Mr Justice Osborne, "There is no cost-efficiency basis on which to proceed to threshold no-fault." It is important to observe

that he is speaking of threshold no-fault, not no-fault. No one suggests that we ought to do away with the no-fault provisions in the present scheme. We ought to improve them.

Our main objection to the proposed system is that it reverses fundamental justice because it suggests that the victim should bear the loss arising from the tortfeasor's negligence. It reverses that principle of negligence law. So the loss would remain with the victim. Now it is true that the victim will be assisted to handle that loss by the no-fault benefit, but it is our position that the assistance is not sufficient and that it amounts to an unjust barrier or denial of the right to receive adequate compensation—not more-than-adequate, but adequate—from the wrongdoer.

The threshold provisions of the motorist protection bill, we say, are unjust. They should be abandoned. There are other reforms that are adequate to solve the problems of motor vehicle coverage. Undoubtedly the industry should be much more closely regulated than it has been in the past, and those parts of the legislation that bring insurers under closer control are praiseworthy. The provisions that say a negligent driver or owner is not liable for losses from injury caused by his or her negligence should be rejected.

What is called a threshold in this scheme, as I have said a couple of times, is not a threshold at all but a barrier. We say it is an unjustly high barrier. It prevents all but the catastrophically injured from receiving reasonable compensation for the loss imposed on them by the negligence of another. The barrier is not raised against victims of other kinds of negligence; it is only against motor vehicle victims that that barrier is raised. It is unacceptable that motor vehicle operators should be relieved of the responsibility to use reasonable care in the operation of their vehicles.

The legislation provides for a reasonable level of compensation regardless of fault. There are those who might argue that the no-fault benefits should be higher than is proposed in this legislation. I do not propose to deal with that today. Enhanced no-fault benefits will prevent the bringing of some claims before the courts, because reasonable compensation in the form of no-fault benefits is satisfactory for those smaller cases. The law of economics will keep the smaller case out of the negligence legal system.

If insurers are not content to rely on the law of economics, then certainly legislation can be drafted that provides a just and predictable description of loss covered by no-fault provisions. If there is to be a threshold, that is where it should be, where no-fault benefits cease to be

sufficient compensation. From that point forward no one should be denied the right to seek compensation before the courts or in some other fashion under the law of negligence.

The threshold definition in this bill has been identified as unworkable by scores of judicial and legal minds. Doctors dread being asked whether an injury is serious and permanent and a continuing injury which is physical in nature and otherwise fits within this awkward definition. A true threshold would make it clear that the gate of justice is open, not closed, if the negligence of a motorist has caused serious consequences to an injured individual, more serious than are compensated adequately by the no-fault benefit. Those consequences must include, to be fair, physical injury, mental and psychological injury and economic loss.

Determination of whether a particular case passes over such a threshold should be made only by a judge, with the protection of the justice system ensuring that the individual may assert his rights effectively against the power of large insurers. Where the right to hold the negligent driver responsible is challenged by an insurer, on the ground of its failing to pass the threshold, the victim's cost of that challenge should be wholly paid by the insurer. Ontario is a progressive jurisdiction. It is recognized as a highly civilized society. This barrier precludes recovery of economic loss. Why would Ontario choose to be the only province or state in North America which does that?

The Ontario motorist protection plan, as it is proposed, severely limits the right of an innocent victim to recover full and actual damages or losses suffered as a result of motor vehicle accidents. Unlike the victims, for example, of professional negligence or the operation of a boat, I suppose, and other negligence off the highway, full compensation for actual losses would be denied under this plan to all but a few victims.

There is an example at pages 9 and 10 of the paper, which I do not propose to give in detail. You have probably heard already, but the farmer is one obvious potential victim of this barrier, rather than threshold, kind of legislation.

The value for the premium is a concern that I suggest the members of the committee might address. Persons who have adequate income protection in the event of sickness or injury are facing under this legislation an obligation to pay for a nearly worthless product. Benefits are payable only after all other income protection is exhausted. Every person who has adequate

income protection should be excused from paying motor vehicle insurance premiums or should have a very substantial rebate. They are unlikely to receive any benefit at all for the premium they pay under the motorist protection plan.

Our conclusion is fairly simple. We believe that the new no-fault benefit levels and the reforms that have been enacted relative to the courts, together with the more efficient new court process, will deal efficiently and fairly with the less seriously injured victims of motor accidents and they will rarely need access to the court. If they do, it is there and it can be dealt with efficiently and speedily. If the government is determined that there must be a legislated bar to the litigation of less serious claims, the legislation must at least allow an innocent victim whose injuries have serious consequences to seek full compensation. The proposed act does not.

I apologize for the beginning of this next paragraph. It is not correct to say that the whole plan is bad legislation, but the threshold provision is bad legislation, we say. It ignores the principles of justice. It is bad legislation because its wording is virtually unworkable and it will cause substantial litigation and substantial cost, which victims will have to pay. Many of them will be deprived of their right of recovery because they will be unable to risk that cost. The elements of reform which are recognized as desirable can all be put in place without the denial of the victim's rights which is threatened by section 231a, which removes the right to sue in the event of motor vehicle negligence.

If the government is determined to impose a threshold of some kind, let it not be the barrier that is proposed and expressed in that section, but a gateway to justice for persons whose injuries portend serious consequences. No-fault protection for less serious consequences is obviously desirable. It has been a feature of our motor vehicle scheme for years. The level clearly needs to be raised, but Ontario citizens must not be deprived of the right to recover beyond that level.

Thank you. We are ready for any questions you might have.

Mr Kormos: I have some problems with the arithmetic.

Mr Brennan: With the arithmetic?

Mr Kormos: The arithmetic, not yours. Ian Kirby, the president or chair of the Canadian Bar Association—Ontario insurance wing, wrote a letter recently to this committee saying, "Look, the insurance industry says it lost \$142 million back in 1987." I have to caution you I do not buy

that, because John Kruger said they made money, but so be it.

Let's take the insurance industry for the briefest of moments and however much it irks me to do this, let's take them at their word. Oh, I shudder. They say they lost \$142 million in 1987 and they say they lost \$100 million in 1989. It has been getting better and they acknowledge that. Now Kirby points out this bill gives them \$135 million or \$140 million of taxpayers' money in the first year alone, the three per cent premium tax and OHIP.

1350

Mr Brennan: Yes.

Mr Kormos: Kirby says: "Why are you giving away the farm? You are more than making up for their loss by giving them \$135 million, \$140 million, \$143 million worth of taxpayers' money. You are subsidizing them not only to alleviate their loss, which they claim exists, but to put them into a profit position." The court reform that was promised has been passed and everybody acknowledges that is going to reduce costs. Once again the question is, why give away the farm? Why is there any need for this restriction on compensation to innocent victims? Surely it cannot be to give them even more profits because the insurance industry is saying that its whole goal here is to be kinder and fairer to victims? Why would that be? As I say, could you explain that arithmetic to me?

Mr Brennan: No, I cannot. That arithmetic defies explanation. I cannot imagine why the proposed bill goes as far as it does. I think the answers are as you have said, that the loss, if you do take the insurance industry at its word, would be more than made up by the reforms that are already in place without the threshold. Indeed, I think that is why the Osborne report makes the recommendations it does.

Mr Kormos: There has been a lot of talk about what this bill does. Once again, I am glad you clarified that there is nothing new about no-fault in this province. It has been around for a long, long time. The bill properly updates some of the numbers so that they reflect 1990 realities. It is as simple as that.

I have to tell you that the insurance industry, when they come before this committee, sort of come cap in hand and say, "Look, we know we've been less than co-operative with our clients in the past, but we promise never to do it again." I get an impression that there has been a less than charitable perspective—not on the part of all insurers perhaps but on the part of many, if

not most—and there is no reason to suspect that will change when it comes time to pay out these so-called no-faults.

Mr Brennan: That is certainly the impression I and many—probably most or nearly all—of my colleagues have. The fear of turning over the granting of no-fault and other benefits to the insurance industry is a very real fear. We have seen nothing in the track record that makes me feel that we ought to do that. We think that many, many of our clients need the diligent, hard-working lawyer going to bat for them to make sure that they get as good a deal as they can. Logically it is not geared to do that. It is geared to make a return on investment to its investors. It is supposed to pay dividends to the people who buy shares.

Mr J. B. Nixon: I will try to be very quick, gentlemen. Thank you for appearing before this committee. You talk about the nature of civilization and democratic rights. I remember my first year in law school studying torts and the tort professor saying: “When you get an injured victim in your office, you want him bleeding. You want his situation so bad that when you go to trial you can show a jury that this injured victim is bleeding and he hurts. You want gangrene in his leg. It is better that way because you are going to get more money for your client.” I said to myself, “That does not have a heck of a lot to do with civilization and the way I think the courts should work.”

Interjection.

Mr J. B. Nixon: Let me finish, please. You are right. No-fault is not a new idea. We have had no-fault in the workers’ compensation system for decades. It is not a new idea. It has been around. We do not spend a lot of time imposing liability on employees or employers. We are more concerned about rehabilitation, getting the worker back to work in a whole condition.

One of the things I find particularly distressing in looking at the whole motor vehicle insurance field is that 30 per cent—some say 50 to 60 per cent—of the injured victims, whether innocent or not, do not get any compensation out of the system. I said to myself, “Maybe a civilized society should be less concerned about determining fault and more concerned about rehabilitation and compensation.” I ask you to comment on that.

Mr O’Dea: If I might comment, first, involvement in a car accident is not an exercise in a form of lottery. I have heard the tort compensation system compared to a lottery. It

rankles to hear it compared to a lottery in a civilized society simply because people are injured. Some people never heal. I agree with you that rehabilitation has to be the hallmark of any system to deal with people who have been injured. Yet there is a sense and a perception, and the sense and perception has come with centuries of the common-law system, that the other side of making a person whole is not simply rehabilitation but a sense that, “I have been done right by a person who injured me.”

It is not a situation where people are hoping that they will be hurt more so they can get more. In fact, I do not think you will find very many people, who are even catastrophically injured, who are satisfied that they have been replenished or made whole again by the system. Money will never replace health even though in law school, both in criminal law and civil law, there are all the adages that are passed back and forth to make something sound more exciting. In the real world money will never replenish one’s good health, but in our system today people perceive it as being tremendously important as part of making them whole again.

Mr McClelland: I have not had much of a chance to respond to this, but I want to amplify the position Mr Nixon took and refer specifically to page 9 of your brief, “Economic Loss.” I will say this and perhaps you will have an opportunity to respond.

I will take the last sentence of the first paragraph only, “Unlike the victims of professional negligence, and negligence off the highway” the possibility of obtaining, and those are my words, “full compensation for actual loss will be denied.” I think it is fundamental that we understand that at best there is a possibility and that point has been made.

The other point I want to raise is on page 10 of your brief, under “Value for the Premium.” I thought I heard you say, and correct me if I am wrong, “Benefits are payable only after”—I thought you inserted the word “all” in your oral presentation—“other income protection is exhausted.” I think it is important to understand that there are many options with existing plans to top up.

My last comment would be that if a fundamental principle of justice is retribution, then that is fine; so be it. That may be a philosophical difference that you and I have. But it seems to me that in reality the tortfeasor does not pay in any event and that what we have to have now is a system where society as a whole pays, through whatever scheme we have, to compensate the

victim. I just think that is important for us if we are looking at this in terms of principles of fundamental justice.

You said, quite rightly, that financial compensation cannot put an injured party in the position he or she would have been, but it is some compensation. I would put to you that the reality in the present system is this society as a whole is bearing that burden; the individual tortfeasor is in fact not bearing that burden.

I know time is so limited and these are areas where I suppose we could have considerable discussion, but I wanted to touch base with you on at least those three points.

Mr Runciman: Why should it apply only to automobile accident victims?

Mr Brennan: If I may very briefly respond to that. Society as a whole bears the cost of our health system in OHIP; those who pay insurance premiums as a whole share in the pooled responsibility that the insurance industry has designed for that very purpose. That works very well. It has worked remarkably well.

One final remark, if I may: It seems to me that what the law professor Mr Nixon refers to—I am glad to say he was not around my law school—had to say about what sounds to me like a very unpleasant operation in tort law is going to be the future if this threshold is put in place. We are going to be stuck with a system where people are going to have to tell their people, “You make sure that you are seriously, permanently, physically, awfully, terribly damaged.” It is just not appropriate. It is not appropriate for the lawyers, and most especially it is not appropriate for the doctors. Doctors who have to report on these cases are going to be—they are already—most seriously disturbed at the wording of this threshold. It does operate as a barrier and it is going to lead to intellectual dishonesty.

1400

Mr Runciman: Like you, I am disturbed about Mr Nixon's law professors, and others. A couple of law professors we have had appear before our committee were somewhat disturbing as well. One was a Marxist, one was close to it and both had contempt for the tort system and neither had practised law in Ontario.

Mr Kormos: I think they were just liberals, liberal Marxists.

Mr Runciman: It leaves one shaking one's head about law schools. In any event, I wonder if either one of you has significant practice in the personal injury field.

Mr Brennan: Yes, both of us have a significant practice. Mine would be about 25 per cent; Mike, yours?

Mr O'Dea: Ten.

Mr Brennan: About 10 per cent.

Mr Runciman: Perhaps it is best that you comment on your own experience with respect to that. One of the arguments has been the fact that we are seeing so many cases end up in court, the cost of the involvement of lawyers, etc. We had a witness appear before us before who said that although a big bulk of his practice was not the personal injury field, his own experience was that a very modest number of cases end up in the court system and that the costs in that sense are very minimal. I would like to hear about your own experience.

Mr Brennan: Certainly that is my experience. As I sat through this morning, I was thinking about that in terms of numbers. I have probably processed personally about 50 motor vehicle claims over the last two years. None of them has gone to court. Every one of them has been settled.

I would think that in our own firm, which is a firm of about 12 lawyers in Ottawa, perhaps two per cent, somewhere between one and two per cent, of our cases have to be tried. Something in the order of 50 per cent probably include the commencement of a proceeding, a claim, but that is really about as far as it has to go. We often have to go to discovery to get the facts and then it is settled, almost invariably.

The processes within the court system that have been improved and enhanced over the years and will continue to be, particularly case management and the things that are just coming up this year, will very much enhance that and further streamline the process.

Justice Osborne made the finding quite clearly that the delay that is the subject of some concern, and I think I have heard it referred to as a reason for this change today by members of this committee, is not due at all to any problems in the insurance industry—it is just not a fact—the delay is due to a one-shot compensation system that is, again, an ancient common-law tradition. That too is being streamlined right now and the delays will be gone.

Mr Runciman: I do not recall hearing you make reference—perhaps you did—about the tort reform package that was announced in conjunction with this bill. Have you looked at the implications of that as to how it impacts on your practice in the personal injury field?

Mr Brennan: Oh, yes, indeed. I have a duty to do that because I am dealing with my clients' concerns.

There are some things about the tort reform package that cause me to wonder how that is going to work, but if we do not have this threshold I think the tort reform package as a whole, along with the court reform package as a whole, will greatly enhance the administration of justice in the province.

The Chair: I am going to have to interrupt there and thank you, gentlemen, for your presentation.

I believe the clerk of the committee has distributed copies of Mr Martin's presentation. You have 15 minutes. If possible, if you could make your presentation within the next seven or eight minutes, then we will allow about seven or eight minutes for some comments, discussions and questions. Please proceed.

**W. BRUCE MARTIN
INSURANCE LTD**

Mr Martin: My name is Michael Martin. I am president of W. Bruce Martin Insurance Ltd, an insurance brokerage firm based here in Sudbury with six offices in northern and southern Ontario. We serve the automobile insurance needs of over 17,000 Ontario families.

I have personally been in the insurance business for 30 years, and needless to say have a keen interest in the current automobile insurance debate. Many years ago I became convinced that the tort fault system was not an effective means of compensating victims of auto accidents in today's society.

Approximately one in 10 vehicle owners are going to be involved in an accident this year. If you were involved in an accident, what do you really want? Do you want to be put back in the same position you were in before the accident with as little hassle as possible? Do you want damage to your car repaired properly by your own insurer whom you know and have personally chosen? If injuries are sustained, you want your medical bills paid and your loss of income, if any, properly attended to. If injuries are serious, you want to know that money will be available to provide for rehabilitation to help make you well and for long-term care if that is absolutely necessary. You do not want involvement with all kinds of people and processes with whom and with which you are not familiar.

I submit to you, ladies and gentlemen, that the present tort fault system by its nature provides all of the things an automobile accident victim does

not want. The tort fault system is an adversarial system. It is a system that has developed an attitude that when an accident occurs, people jump out of their cars with their fingers pointed somewhere saying: "You caused this. You will pay." This compensation system for injuries feeds on a desire not only for compensation for actual loss sustained, but for revenge payments as well.

Should the amount of money you receive for an auto-related injury be determined at all by the quality of the lawyer you happen to pick to plead your case or the particular views of the judge who happens to preside at your trial? Should the amount you receive be subject to negotiation, often protracted over many months or years of uncertainty? Should \$400 million of your premium dollars every year go not to those who are injured but to pay legal fees?

The time is past due for change. I believe that the proposed Ontario motorist protection plan, if implemented in close to its present form, will give the people of Ontario the best auto insurance system in North America. Because it involves significant change it will take time for people to adjust their thinking from the adversarial system they grew up with to a system that guarantees good basic benefits for all, regardless of fault.

I do not suggest for a minute that it is the perfect system. There are certainly ways to improve it and refine it and I am sure your committee will address some of these points. For example, I feel strongly that benefits should be indexed to inflation.

The major group opposing the move to a no-fault system of auto insurance is the Committee for Fair Action in Insurance Reform. This organization is made up primarily of the personal injury lawyers of this province, the group that clearly stands the most to lose if no-fault auto insurance is introduced. If I were in their position, faced with losing a significant part of my income, I expect that I too would be in there fighting to maintain the status quo.

Let us address for a few moments some of their arguments against the proposed legislation. One of the things my lawyer friends have said to me and that I have noted in the newspapers is that they cannot understand why the government has failed to heed the advice it has been given from the various inquiries held into the auto insurance issue over the past three and a half years. They are particularly fond of quoting the report prepared by Justice Coulter Osborne who clearly opposed eliminating anyone's right to sue.

Justice Osborne, of course, is steeped in the history and intricacies of the tort system. His career has centred around the tort system and it is not difficult to understand this bias in favour of it. However, I too can quote from the Osborne report in support of my position.

Recommendation F106 reads as follows, "From the standpoint of the compensation criterion, pure no-fault and threshold no-fault are superior to the tort system." Recommendation F107 goes on to say: "Rehabilitation is an essential objective of any compensation system and it cannot be realistically achieved through the tort system. Because no-fault compensation is delivered on a first-party basis and because rehabilitation benefits must be made available without undue delay, the rehabilitation criterion is better served by no-fault than by tort law."

In fact, Justice Osborne called for the retention of the tort fault system with an overlay of a no-fault system whose details very closely resemble the proposed legislation. Unfortunately Justice Osborne's proposals failed to come to grips with reality in terms of cost, with the willingness or ability of the average Ontario motorist to see another \$300 added to his insurance bill in 1990 resulting from the implementation of his recommendations.

1410

FAIR has had little to say about the recommendations of the 1986 Ontario Task Force on Insurance. Why? Because the Ontario Task Force on Insurance, led by Dr Slater, recommended: "The government of Ontario should then introduce a mandatory system of auto insurance for personal injury compensation whereby all insureds purchase a basic minimum level of insurance including coverage for loss of income, costs of care and unlimited rehabilitation and medical expenses. The minimum level for loss of income should be set at a level such as to cover a clear majority of the population of Ontario, and should be subject to the appropriate cost-of-living indexation formula, and to an annual review by a committee of the Legislature. Where considered appropriate, insureds could purchase additional layers of income replacement coverage on an individual or group basis."

A further recommendation reads as follows: "The government of Ontario should consider substantially limiting resort to the tort/litigation system with respect to personal injury compensation from automobile accidents, by way of a threshold." And FAIR says the government has failed to follow the advice given to it by its own inquiries. I say, "Balderdash."

FAIR says drunk drivers will receive the same treatment as innocent drivers under the proposed plan. In fact, convicted drunk drivers will be denied loss-of-income payments under the no-fault benefits section of the policy.

FAIR claims OMPP is a quick-fix solution that will not result in long-term premium savings. I have seen one actuarial report that clearly demonstrates short-term and long-term premium savings in excess of 20 per cent. Furthermore, tens of millions of dollars in legal expenses will be diverted to paying benefits to injured motorists.

FAIR has implied in its advertisements that innocent victims with significant injuries could be denied access to compensation. This is a falsehood. Innocent victims will have access to the full range of no-fault benefits: loss of income of \$450 per week with optional additional benefits available; \$500,000 medical and rehabilitation benefits; \$500,000 in long-term care benefits, and substantial death benefits. In addition, those with very serious injuries will still have the right to sue.

FAIR claims that accident frequency will increase under a no-fault system. The fact that fault will still be assessed for determination of premiums lays this argument to rest.

FAIR introduced a proposal of its own some months ago recommending a blanket deductible of \$5,000, or \$10,000 on bodily injury awards. This proposal was dismissed by Justice Osborne with the following words: "It seems to me that cost savings under this proposal might well turn out to be somewhat illusory. General damages would increase because of the existence of the deductible. The deductible would become an inverse target."

FAIR has said that those suffering psychological or mental injury will be denied compensation under the proposed legislation. In reply, I quote from the draft legislation setting out the no-fault benefits: "The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury in an accident all reasonable expenses to a maximum of \$500,000." In section 8: "The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury in an accident the expenses described in this section for the long-term care, if any, required by the injured person....The maximum payable under this section is \$500,000."

Let me sum up my presentation by briefly reviewing why I support the Ontario motorist protection plan. It is time for fundamental change

in our system of compensation for automobile accidents in this province. The present tort/fault system is expensive, slow, unpredictable and ineffective. It fails to address as many as one third of those injured in auto accidents in this province, people like you and me who might just find ourselves today or tomorrow involved in an accident where we are at fault. A no-fault system makes better use of society's resources because it provides more coverage to more people more quickly and does it more effectively than the traditional tort/fault system.

OMPP is a comprehensive program involving not only fundamental reform of the insurance system but also a number of other initiatives aimed at reducing the number of accidents on Ontario highways. I am sure that the committee will hear many more submissions opposing this legislation than supporting it. That is to be expected as the forces of self-interest mobilize to protect the status quo. The legislation is not perfect. I hope that you will find ways to improve upon it but that in your final recommendations you will support the important initiatives of this legislation for the benefit of Ontario motorists.

Mr Runciman: That was what I would describe as a pretty good dose of balderdash, with respect. Perhaps one could describe it as a liberal dose of balderdash.

I want to talk about a couple of things. You mention Slater, and that is a bit of a red herring, a significant bit of a red herring, because Slater was commissioned to look at the so-called liability crisis. Auto is a very modest element of that and Slater acknowledged that himself. Indeed, that is why the Liberal government appointed Osborne to take a most comprehensive, perhaps the most comprehensive, look ever taken at auto insurance. So to try and denigrate Osborne, on one hand, and build up Slater is misleading the people who are listening to this testimony today, to say the least.

You talk about the major opposition to this being FAIR. I want to tell you the major proponents of this are representatives of the insurance industry or those affiliated with the insurance industry. Certainly, we are hearing testimony in opposition from FAIR and from groups associated with lawyers, but the private citizens, the people who are concerned about head injuries, the people who are concerned about psychological damages, those kinds of witnesses who are appearing before this committee day after day are in opposition to this legislation. They have no vested interest in this legislation going through. They care about the

rights of innocent victims in the future if this legislation passes. They do not have a vested interest, as I would suggest you do, sir.

I want to talk about profitability. Let's go back to smart no-fault. Did you support no-fault before it was proposed after Slater?

Mr Martin: I thought that smart no-fault was a move in the right direction, sir.

Mr Runciman: A move in the right direction. Well, on smart no-fault, the Insurance Bureau of Canada said \$750 weekly indemnity, indexed, allowed psychological injury to pierce the threshold. I am just wondering what has changed. If you supported smart no-fault which had much better benefits included, what has changed in the interim?

Mr Martin: I guess I cannot totally answer that, but I think that what we are dealing with here is a system of no-fault benefits that can be provided at a cost that people can afford. I suppose if we wanted to have \$750 of monthly income—and believe, me I would like to see it \$750—we could do it, but at what cost? We have to have a plan that people can afford to pay for. I do believe that the level of benefits that have been proposed meet the basic needs of the majority of the working people of this province, and for that reason I can support it. If those who require additional benefits feel that they do, they certainly can acquire those.

Mr Runciman: You sure are not going to fight them on that, are you? No, siree, you are not going to fight them on that. That is an extra premium in your pocket.

The Chair: I am going to have to interrupt. I have Mr Kormos and Miss Martel for a minute each, and then I have Mr McClelland and Ms Oddie Munro for a minute each.

Mr Kormos: I have to tell you, Mr Martin, I wish we would have met sooner, because balderdash had not been a part of my vocabulary. Had it been, I surely would have used it, along with the other exclamations that I have described this stuff with.

In any event, let us talk for a little bit about the moaning and groaning of the insurance industry. I have a problem, and you might have been here earlier when I asked the people from the County and District Law Presidents' Association. How come the auto insurance industry in Ontario in 1987 said that it lost \$142 million, when Irene Bass from William M. Mercer Ltd, who was paid a whole pile of money by the taxpayers of Ontario when she did her actuarial calculations, etc., up at the Ontario Automobile Insurance

Board, says, "No, when the insurance companies say they lost \$142 million in 1987, what that means is that they made \$55 million"? Who is lying? Is the insurance industry lying or is Ms Bass from William M. Mercer Ltd lying?

Mr Martin: I do not think the insurance industry is lying and I do not suspect that Ms Bass is lying. I suspect that the figures are being drawn from different situations to prove a point. What I do know from my own experience as an insurance broker here in Sudbury is that insurance premiums are grossly inadequate and that if we are going to continue with the present tort system, which gives benefits in what I perceive to be a rather willy-nilly fashion, and I have perceived that for a long time, then there are going to have to be substantial increases in premiums, sir.

1420

I think the system that has been proposed allows the system to provide benefits guaranteed to all at a premium cost that people can afford. I can assure you from the figures that I have in my office—and I will be glad to have you come over afterwards and we will take a look at them—that the insurance industry is not making any money today. The losses being paid out are substantially greater than the premiums taken in.

Mr Kormos: Well, that is what you said in 1987 too.

Mr Martin: That is true, and it has been the case ever since the premiums have been controlled at a rate far below the inflationary costs in the system. Now we have a system that is proposing a way to have some control over the costs. I think that is what we need.

Mr Kormos: You do not pay any money out.

Mr Martin: What do you mean, "not pay any money out"?

Miss Martel: I want to go to your statement that you have seen one actuarial report that clearly demonstrates premium savings, short-term and long-term, in excess of 20 per cent. I would like to know where you get that from and if we can have a copy of it.

Mr Martin: I am not privileged to release a copy of it, but I can tell you that it involves one of the insurance companies with whom we deal. It was an independent actuarial report indicating a 39 per cent shortfall in their current premium levels, and that would be reduced by some 23 per cent with the Ontario motorist protection plan system being brought into place.

Miss Martel: Very quickly—Mr Chairman, I will go as fast as I can—I look at the first year if

this bill is passed, and I see that without having to pay the three per cent premium tax, you are going to save \$95 million, or the industry as a whole will. Without paying the OHIP cost, that is another \$45 million; so a \$140-million savings in the first year.

At the same time, the minister has said on more than one occasion, and especially during the second-reading debate, that he expects premiums will increase at least eight per cent in urban areas. I am wondering, if that is the case then, how it is that I do not believe my premium is going to be reduced in the short term or the long term.

Mr Martin: The industry, as I pointed out, needs an increase, and I guess the way I do confirm this—they need an increase now of 35 per cent to get a reasonable return on investment. So it is better to have no increase or an increase of eight per cent than to have one of 35 per cent under the current system, I suggest to you.

Mr McClelland: Very quickly, sir, if you would touch on a point that was raised here, you are certainly aware of subsection 4(4) of the draft regulations and the responsibility that you will have to report the premium taxes and so forth, the so-called tax grab of my friend, or the gift to the insurance company, as it has been referred to—could we get a comment on the impact of the regulation vis-à-vis premiums for the consumer of the province.

And one other thing, if you have a moment to comment on it. It has been said that for the 35 per cent, more or less, of people who will not be sufficiently compensated under the proposed plan with respect to income loss, they will be able to purchase additional layers of insurance. What is your estimate of the impact on premiums for those individuals; first, the impact of subsection 4(4) with respect to your accounting to the commissioner for the taxes and the loss of subrogation rights, and second, what, if any, costs may obtain to the consumer for additional layering?

Mr Martin: I do not have information on your first question, sir. On the second question, I think the number of people who will require additional benefits will be relatively small because of the fact that the disability payments will be secondary to other disability insurance that people have access to. A very significant number of the working people of this province do have, in fact, disability insurance plans. Those who do require additional benefits are those who can best afford to pay for them, and I must admit that I have not

seen any premium calculations for those additional layers up to this point.

Ms Oddie Munro: The previous speaker has referred to the reform of the court system, and on page 6 of your brief you speak of the need for fundamental change because "The present tort-fault system is expensive, slow, unpredictable and ineffective." I am wondering if you had thought about the positive effects of reform and how it affects your case.

Mr Martin: I think the tort reforms are very important to this whole new plan that is being proposed because there will still be some people who will have access to the tort system when they come through the threshold. If there had been no move to a no-fault plan, these plans would have had some effect, maybe five per cent, six per cent or seven per cent on the total cost, but by themselves would not have effectively addressed the problem of cost and, I do not believe, would have affected the problems that are inherent in the tort system for settling personal injuries.

The Chair: Thank you very much for your presentation. I have to interject at this point.

Just before I call Pamela Scherman, we have had two requests; first, that we refrain from smoking in this room because we have individuals who have problems. Second, for the benefit of the audience at the back, we are not intentionally keeping you in the dark. Where you are sitting is a dance floor, and the only lights available there are strobe lights. We did not think you would want to put up with two or three hours of strobe lights continuously. Those are the two points I wanted to speak to at this time.

Pamela Scherman, we have a copy of your presentation, and the letter was circulated to the committee. You have 15 minutes. Please proceed.

PAMELA SCHERMAN

Mrs Scherman: Basically I am here today to speak about the proposed no-fault insurance. I am concerned both from a mother's point of view and that of a nurse. However, my biggest concern here is to speak for those who cannot speak for themselves, being the children who will indeed be the victims of the new legislation.

The first example I would like to use concerns me as a mother. It is my understanding that with the new system, if I were to witness the death of my child and I could not return to work as a result of the stress and trauma caused by the accident, I would not be eligible to sue for pain and suffering. Therefore, I would receive nothing. I believe any parent, either mother or father,

would be devastated at witnessing his or her child's death. Most places of employment give three days' compassionate leave. However, I do believe it would take a parent far longer than that to recover from the trauma of a child's death.

The second example I have clearly illustrates the unfairness of the proposed new legislation. When a child perhaps is a victim in an accident, suffers a broken arm and leg and has a minor head injury, it is highly conceivable the child could or would be hospitalized for possibly two to three months. Along with that, the child may require rehabilitation while at home for possibly another month or two. With the new system, the child would not receive anything for pain and suffering, could possibly lose one year of school, which would delay the child's entry into the workforce in the future, and there would be no compensation to the parent for the time lost from work to look after this child.

As a mother, I would also think that during the time the child was hospitalized and then while at home, the mother would need and want to spend many hours with the child. If the mother takes the time from work to look after a child, she will receive no compensation. I know I would not be able to concentrate on my work if my child were in this situation.

The argument I have heard is, "Why does the mother need to be at the hospital when there are nurses there to look after the child?" My response as a nurse is this: I have seen many children who have been in severe accidents. When the mother or father is there to work with the various disciplines assigned to help the child, the recovery period is substantially shorter.

A nurse who has a patient load of six or seven children cannot possibly give the love and nurturing to each individual child that she may like to do. However, a mother or father can do this. As a nurse in a busy hospital—you can appreciate the fact that a nurse cannot do that—it is impossible to give this nurturing and care to every individual child.

In conclusion, I feel no-fault is going to be harmful to the innocent victims of accidents, especially families who are caught up in the tragedy of an accident.

The Chair: I have Mr Ferraro on a point of clarification. Then I have Mrs LeBourdais and Mr Kormos.

1430

Mr Ferraro: It is not my place to enter into any debate, nor would I suggest I try to do that, but let me see if I can clarify a point that I think

you said. You said that if you witnessed the death of your child, you would not be eligible to sue.

Mrs Scherman: That is my understanding.

Mr Ferraro: That understanding is incorrect. In fact, you have two courses of action to sue in the event of the death of your child. One, the estate can sue because the child obviously died. The other is a derivative of the Family Law Act, which would allow you to sue. Irrespective of whether there is death—in other words, in a case where there is no death you can still be eligible for the rehabilitative and supplementary medical benefits that have been added on and the income replacement as a result of psychological trauma or mental—

Mrs Scherman: What you are saying is that if my child dies, that is okay, I will get compensation for that, but if it is just a minor accident where the child is incapacitated for two to three months and I have to take time off work, I can still get compensation.

Mr Ferraro: You will get compensated, yes, for any income loss and indeed for the rehabilitation.

Mrs Scherman: That is not what I understand when I read the paper.

Mr Ferraro: Your understanding was incorrect.

Mr Runciman: On a point of order, Mr Chairman: There are a couple of things here that the parliamentary assistant has been saying during the day. I think we require more clarification when he makes these statements in front of witnesses. He talked about the right to sue in this situation, this mother witnessing an accident and retaining the right to sue, but I assume that she still has to prove that she passes the threshold. Is there no requirement in there?

The Chair: I believe the example the presenter used was death in that situation.

Mr Ferraro: She will clear the threshold.

Mrs Scherman: Even in a serious accident, am I still going to be compensated?

Mr Kormos: Maybe.

Mr Ferraro: You would be eligible for income replacement and you would be eligible for rehabilitative—

Mrs Scherman: And how is that decided?

Mr Kormos: By the insurance company.

Mr Ferraro: By the medical adviser.

Mrs Scherman: How long am I going to have to wait to find that out?

Mr Ferraro: The new legislation would say income replacement within 10 days and those other rehabilitative cases within 30 days.

Mrs LeBourdais: I will be very brief because really a lot of the points I was going to make have already been made. I think clarification should be made in the minds of many people such as yourself who bring forward examples like this. People assume, "If I cannot sue, I get nothing." You get income replacement and you get rehabilitation starting immediately. If you choose to sue in the present system, you may win or you may lose, and you may have a good lawyer or you may not have a good lawyer depending on your capability of affording those kinds of things. So it is not an all or nothing; you definitely get something.

Mrs Scherman: But the income replacement is not necessarily going to be what my income normally would be.

Mrs LeBourdais: It depends on what your income is, but up to \$30,000 is the cutoff. If you are earning up to \$30,000 you would get an equivalent. If you made more than that, then we are suggesting you should have additional disability insurance, which we feel people—

Mrs Scherman: In other words, I have to buy my no-fault insurance and then go out and get extra coverage.

Mrs LeBourdais: If you are making in excess of \$30,000 we would recommend that.

Mrs Scherman: Which a lot of people are, yes.

Mrs LeBourdais: More are not though.

Mr Kormos: What people are telling you is that in this new system you are going to get no-fault benefits. What people should be telling you is that you are supposed to be getting those no-fault benefits now, but you are not because the insurance companies keep jerking you around. We have heard that time and time again.

Look, you are dead on. You are talking about a 12- or 13-year-old kid—this group has heard about this before and has denied it—who is run over by a drunk driver, suffers a broken back and is put in traction, misses school, goes through incredible pain and suffering, and that kid does not receive a penny in compensation for pain and suffering or loss of enjoyment of life or delayed entry into the workforce, and the rest of it is all maybes.

These people cannot tell you with certainty what you are going to get because the insurance companies are going to do their damndest to make sure you get as little as possible, and if at all

possible to make sure you get nothing because what we just heard a little while ago is so true: they are in the business to make money. The less they pay out and the more they collect, the more money they make. That is what the system is all about.

Mrs Scherman: I have a friend whose daughter was in a severe car accident a year and a half ago. She is still fighting with the insurance company to get—

Mr Sola: Under the present system.

Mrs Scherman: Under the present system—to get those things she should be getting.

Mr Kormos: That is right.

The Chair: Ms Martel, a minute and a half.

Miss Martel: Very quickly, I am not sure if you will be able to answer. I am curious because you said you work in a hospital. You see a number of children in particular who have suffered serious injury and go through a long rehabilitative process. Under the bill, although there is the \$500,000 for rehabilitation, there is a cap of \$1,500 a month, \$50 a day. I cannot imagine where you can buy that kind of treatment if you have to keep a child at a home, even if you are bringing in a nurse. I am wondering what your response is to that.

Ms Scherman: It is impossible to do. I know the lady I am talking about whose child was in an accident. It will cost her \$150,000 just to renovate her home to accommodate this child. Then if she has to return to work, she is getting pressure from the insurance companies to go back to work because: "Why do you have to be there? You are just a mom. Let's get the nurse." But you bring the nurse in and that is going to cost you a lot more money than letting the mother stay at home, and the child is going to benefit more from the mother than she is from a nurse.

Mr Kormos: The insurance company is leaning on her, saying, "Get out," and they will do that under the new system.

Mr Ferraro: The only point I was going to make was that the mother, yes, is limited to \$1,500 a month, but if there is any necessary—

Ms Scherman: A month or a week?

Mr Ferraro: A month. If there is any other—

Ms Scherman: That is nothing.

Mr Ferraro: You alluded to renovations to the house and so forth. That is extra.

Ms Scherman: But \$1,500 a month to accommodate some of these kids is nothing. I mean, some of these parents even have to bring in people to just give them parent relief because

they are with a child who they cannot even give to a babysitter, because you certainly cannot get a normal babysitter.

Mr Ferraro: The only other point I would make—I would not necessarily disagree with you—is that nursing care is extra as well.

The Chair: Thank you for your presentation.

Mr Kormos: Good luck to you.

The Chair: From the Sudbury and District Insurance Brokers' Association, two individuals, Mr Navarro and Mr Langley. Gentlemen, you have half an hour. I do not think we have a copy of your presentation.

Mr Navarro: No, Mr Chairman, the reason being that a lot of the points I will bring up during the discussion you have heard at previous hearings.

The Chair: If we could take 15 minutes for the presentation and allow 15 minutes for some comments, questions and discussion, we would appreciate that.

SUDBURY AND DISTRICT INSURANCE BROKERS' ASSOCIATION

Mr Navarro: One correction: with me is Terry Taylor. Art Langley is still in North Bay; he could not get here. Terry is assistant general manager of the Insurance Brokers Association of Ontario. I myself am speaking in the capacity of the president of the local chapter here.

I just want to try to get my thoughts together as I go along here. As an insurance broker and distributor of the product, in talking to my peers in this region, we live in kind of a unique area where market conditions have not been the greatest for the last year or year and a half. That is something I am sure you have heard in other places, but just north of Parry Sound or Barrie, if you wish, I think we have maybe 17 or 18 major companies that are willing to do business in the north.

The tightened market conditions have cost us, as brokers, a lot of aggravation and a lot of second thoughts. There are a lot of people who are in that grey area where in normal circumstances you could give them a regular, solid market; we are putting them into Facility. Market conditions are dictating that a lot of clients we deal with are into a high-risk situation when they should not really be there. We feel the plan that has been outlined in the hearings you are holding across the province will certainly help alleviate that problem.

We have some reservations, just as you do. I believe Mr Martin brought up one of them, the

inflation clause and the accident benefits. We have other reservations—if I can just look for the name of this—in regard to the insurance commission that will be approving rates, that the rates it approves will be fairer and we will not get back into a situation where companies are getting into rate wars. We have a number of other reservations that I am sure you will address as the first year of the plan comes into implementation.

There are a lot of good things you are suggesting. One of the things we as brokers like to see is that tied selling will be prohibited. Tied selling is not necessarily prohibited now, but although it is never written it is an underlying cost in a lot of our markets; they want one auto for one home and that type of thing. It puts a lot of pressure on us, the brokers and distributors.

1440

The things being outlined, the more severe penalties for drunk drivers, the speeding fines being tripled, public education, all those things will certainly help in lowering or keeping the rates stable. Our understanding is that where we are now in northern Ontario, Sudbury, we should not really experience a rate increase. That eight per cent increase that we have been hearing about is geared to metro areas, and metro, for your information if you are not aware of this, means the Toronto area. It does not mean, from what I gather, that our clients would not necessarily get a rate increase but it should be stable across the board.

Right now we know that the present system is not working well for auto consumers. We have to face our clients who walk in the door, and we try to tell them, "Gee, we have no market for you," or, "Yes, there will be an increase of 30 per cent or 35 per cent." Their concerns are that they just cannot afford it. We live in an area where we have a large working-class population. Premium dollars are a big concern, and they are a big concern to us because we are the ones who have to market that product and make sure our clients are getting the best for their dollars.

The penalties that will be levied on the insurers if the compensation is not paid on a timely basis is something that we will welcome seeing up here. The fact that within 10 days of proper proof of loss being presented to an insurer, payments can begin, will certainly help the image of the product in areas such as ours. I think one of the things we as brokers face, some of the frustrations we face are that some of these companies do not get the payments out to the people as quickly as they should. We all see this, and although I am a businessman, my responsibility is first to my

clients, but I cannot service my clients if I do not have any market to represent to them.

I really do not have that much more, unless there is something you specifically want to address. I will try to answer it to the best of my knowledge, and if I cannot I am sure Terry can come in with the figures and numbers to back it up.

Mr McClelland: Gentlemen, thank you for being here, and perhaps you can answer a couple of questions. Two points, and you can deal with them however you see fit. I have heard it said, actually by the law association but I have heard it said elsewhere, that insurance companies are not to be the ones charged with responsibility of paying to the injured parties. We have had many references made to the inability of the victims to collect. I would like you to expand somewhat, if you could please, on the benefit of having a first-party-pay basis under the proposed legislation. That will be one point I would ask you to expand upon.

My second one is the question I put to Mr Martin, and he did not have the data available to him, but I would like you, as brokers, to discuss if you can the impact of subsection 4(4) of the draft regulations, which says that the insurer must provide an estimate of the impact of its rates having regard to the taxes and the OHIP subrogation, those rights that are being eliminated and the taxes that are being forgone. I want you to comment on the impact of that. It has been said, and I will be very candid with you, that people in the opposition have used phrases such as "a tax break to the insurance companies" and "a gift to the insurance industry." I need a comment on that and what the real impact of that is, and on what responsibility befalls you in terms of accounting for that with respect to the setting of rates and premiums.

Mr Taylor: The insurance industry has up to now been compelled by the provincial government to collect a tax equal to three per cent of the premium and to remit that to the government as part of the overall tax collection scheme. I suppose it could be argued that if the tax had not been levied, the insurance industry would not have to collect it. I suppose that is the same as when they brought in the temporary income tax in 1917. It is still there but I suppose it is still temporary.

As far as OHIP is concerned, it was a deal that was struck some time ago to eliminate a lot of paper flying back and forth, which I think they call the OHIP subrogation agreement, where a percentage of the total premiums paid is paid to

OHIP as a bulk subrogation payment to go into the OHIP general coffers. I think that figure is two per cent or three per cent, but I am not sure. The tax is collected because the provincial government compels us to collect it. The OHIP levy is there quite frankly to eliminate a lot of inefficient and more costly paperwork. I think they call it the OHIP bulk subrogation agreement. That is just money that goes back to OHIP to pay for things like ambulances and regular care that accident victims get.

Mr McClelland: I do not want to put words in your mouth but I want a clarification. In short, you are saying that those costs would otherwise be passed on to the consumer.

Mr Taylor: What I am saying is that in the case of the premium tax, if the government had not levied the tax, the insurance companies would not be collecting it. As far as the OHIP bulk subrogation agreement was concerned, it was a way of bringing some efficiency and some common sense into the repayment of OHIP by the industry for the benefits provided under the OHIP scheme. If you did not have OHIP, you would not have to pay them back for the benefits they provided. You would be paying them, such as they have in the United States, under the private medical system.

The Chair: Mr McClelland, I have Mr Nixon on a supplementary if you will allow him.

Mr McClelland: Certainly.

Mr J. B. Nixon: I am wondering if Ms Parrish could clarify the intent of subsection 4(4).

Ms Parrish: Subsection 4(4)?

Mr J. B. Nixon: It is the regulation which I understand requires the insurance companies to disclose in their filings with the insurance commission—

Ms Parrish: Oh, yes. You mean in the regulation under Bill 10.

Mr J. B. Nixon: Yes.

Ms Parrish: The purpose of the requirement that companies disclose how much they would have otherwise remitted in the form of taxes and OHIP is to give the regulatory authorities the ability to ensure that rates are set with pass-through to consumers of taxes and OHIP premium subrogation, so that when rates are examined by the regulatory authorities to determine whether or not the companies can have the rates they want to charge, and the regulatory authorities have the ability to refuse that, they can look at whether or not they have passed through these costs. That is why companies are

asked to specifically identify it, so that they can be found.

Mr McClelland: Would you comment on the statement that insurance companies ought not to be put in a position to be the ones that are paying back to the injured party or providing benefits to the party? I want you to comment on that from your position as brokers dealing with insurance companies. I will let you deal with that however you like in terms of the first-party-pay principle as embodied in Bill 68.

Mr Taylor: Who else to pay the claims back to the people but the insurance companies that collect the premiums and provide the benefits? As far as the first-payment option goes, if you have ever dealt with a provider of another service, for example, a television repair shop, and you are dissatisfied with the level of service or the quality of service that television repair shop provided, the next time you want to get your TV repaired you will go to another shop.

Similarly with the insurance system, if you are unhappy with the way a particular company treats you as its customer, if you are unhappy with the level of service or the quality of service provided to you when you needed it the most, at claim time, then when it comes time to renew your insurance policy you are likely going to go and look for another insurance company and perhaps even another broker. That is one of the advantages there is to having a number of insurance companies and a number of brokers within the system. The poor people in Manitoba and Saskatchewan and British Columbia do not have any choice. They have to deal with the government, whether they get good service or not.

Mr Kormos: They ain't doing so bad; they pay lower premiums.

Mr Runciman: And they have the tort system.

Mr Taylor: If the insurance companies in Ontario are now going to be motivated to retain their clients and keep their clients in the book, they are going to have to provide good, quality service at the time people need it the most and that is at claims time. The first-party-pay system is a good improvement over the current system.

Mr Kormos: I have to tell you that I appreciate your references to the west. It has always been remarkable through the course of these hearings how the Liberals can see fit to run a public nonprofit system in Quebec, how the Tories can see fit to run one in Manitoba and in Saskatchewan, and even the Social Credit, even

people like Vander Zalm, who, holy cow, is a little bit to the right of Genghis Khan, can see fit to run one in British Columbia.

1450

Before the Legislature shut down, the Minister of Financial Institutions, Murray Elston, would not answer questions about his possession of actuarial data, which permitted him to say that premiums will rise by eight per cent in the first year only if this legislation is passed. His parliamentary assistant, since these committee hearings have started, has said: "Well, that stuff is being worked on and it is not quite ready yet. We will try to let you know as soon as it is ready." Now I read in the Sunday Star and in today's Toronto Star that there has been a freedom-of-information request for some 23 documents which, among other things, as I read in the press, are in the possession of the minister and which he declines to release to the public.

My concern is that we are dancing in the fog here. This figure of eight per cent has been bandied about. First, the minister says, "No, there are no actuarial figures," which I really find bizarre because that means the government is sort of going to do things typically, put the cart before the horse. They are going to pass their bill and then work on the actuaries. Then the parliamentary assistant says they are being worked on. Then we find out that they appear to have been done, yet they are not being released by the government. Do you gentlemen not have some concern about the government's refusal to release those documents which would substantiate its claim of but eight per cent increase in the first year of this plan?

Mr Navarro: No. As brokers up here, we are not privileged to some of the information that you have, but all I can tell you is that all the information that comes across our desk, all the stuff that is presented to us by insurance companies tells us—and we see the figures; we see the losses. I believe Mr Martin had an invitation to go visit maybe some of the figures. I also have figures in my office, just like my other friends here. We see the losses. The auto portfolio does not make money for insurance companies across the board.

Under the present system, if you want to retain the present system, as a distributor I am part of the marketplace. If that is what the public wants and that is what the people go ahead with, you have to be prepared to pay 35 to 40 per cent more. That is basically cut and dried. What we have now is an alternative that looks after, I think, just

about every need that is out there, and the rates are going to stay basically stable.

We, as brokers, like to see a stable marketplace. I mentioned earlier that the marketplace is very tight. By that, I mean that insurance companies are not willing to write the auto business for the dollars and cents they are receiving now. As a broker, I have a real hard time with that because in a free enterprise system, I should be able to sell products and I cannot.

The Chair: Miss Martel, for a minute and a half.

Miss Martel: I am just a little bit curious about this situation in Sudbury you refer to. I thought you said when you started your remarks that the market conditions had been bad and that some people had been forced into the Facility Association as a consequence. But when we talked about the minister's statement that there will be an increase of eight per cent in urban areas, you said that does not apply in Sudbury and there will be no increase here. I am wondering how those two jibe.

Mr Navarro: Basically, what they are telling us is that Sudbury does not fall under the Metro or urban scheme of things. We are hoping and they are telling us that in an area such as ours, and an area that you represent, premiums across the board should initially have zero growth for the first year. There will be no increase across the board in an area that we live in. That is what they are telling us and that is what we believe.

Miss Martel: Can I ask who is telling you that?

Mr Navarro: It is coming across from our association. Terry, are those figures correct?

Mr Taylor: My understanding is that they define the urban areas of the province for the purposes of this scheme as Oshawa to Hamilton and south of Newmarket, and the other areas of the province were designated nonurban, if you will.

The Chair: Mr Kormos, 20 seconds.

Mr Kormos: I say to the parliamentary assistant, let's have those documents. You are leaving these brokers out on a limb. They are making promises they may not be able to keep because your minister wants to keep secrets. He does not want to release documents that have been asked for.

Mr Taylor: I have never made a promise I would not keep, Mr Kormos. You should know that.

Mr Kormos: You may have to live with that.

The Chair: Mr Runciman, five minutes.

Mr Runciman: Just much along the same lines, I was curious about that comment as well. How do your rates compare on average with the Metropolitan Toronto rates?

Mr Navarro: I think on the liability, on the third-party system, they are a little bit lower. As a whole, I think our rates, as compared to Metro, on the average, are within five per cent or so of each other. There is not a real big difference in premiums.

Mr Runciman: I guess you have to conclude that it is passing strange that you are talking about an average eight per cent increase for a very basic insurance package in the Metro area and that you are not going to have any impact at all. I think you should indeed be cautious about making those kinds of comments. You could be facing an awful lot of heat from your consumers, if the message goes out from here today that you are not going to get a—

Mr Navarro: We have been facing that for the last year or year and a half, sir.

Mr Runciman: You were throwing another figure around here of about 35 to 40 per cent, and I guess we heard the minister make a grandiose presentation about up to 30 to 35 per cent the other day. This ties in with what Mr McClelland was talking about, and I have a tough time understanding where he was coming from, when talking about the tax breaks or however you want to describe them. I think a subsidy is a subsidy is a subsidy, and I think that the people who should be paying for auto insurance are the people who are driving cars and not the general taxpayer. Do you agree with that?

Mr Navarro: I believe in a user-pay system myself. Again, I think the nature of the beast is that our system is based on supplements all along the way, from OHIP up. What can I tell you?

Mr Runciman: So you do not have any problem with this new concept of subsidization of auto insurance through the general taxpayer?

Mr Navarro: I look around the province and there are not too many schemes that are not subsidized in one way or another.

Mr Runciman: You pretend to be a free-enterpriser, do you?

Mr Navarro: I try to be.

Mr Runciman: How does that jibe with you being a free-enterpriser? I think you would have some difficulty with that, as would most.

I want to talk about some of the other concerns that have been mentioned by a past president of the Insurance Brokers Association of Ontario, Frank Davies, who happens to be a friend of mine, someone whose views I respect. He expressed concerns about a couple of areas of this legislation, and one was cherry picking and the fact that the companies—and you have experienced that now, where they consider them to be higher risks—are shoving them off, will not handle them, and you have had to refer them to Facility.

Do you not have a concern about that now, with someone who does not have collateral benefits, that those kinds of people, the poor in society, perhaps the elderly, who are not going to have that additional protection there, are going to be shoved off as higher risks by the insurance industry?

Mr Navarro: That is a great concern of ours. As brokers, one of the biggest areas that we address to our association—and our association has passed that through to the people involved in the setting of the legislation and insurance companies—is cherry picking, if you will. We surely do not want to see a preferential class system. We have brought out examples of where this could happen, and we have assurances that the insurance commissioner will look at the rates before they are approved, to make sure that this will not happen.

Mr Runciman: Is that why you did not make reference to it in your submission today?

Mr Navarro: Basically I am well satisfied that if the rate commissioner does the job he is supposed to do, it will not be a problem.

Mr Runciman: What about fault determination? Do you have any concerns about fault determination?

Mr Navarro: We are going into a no-fault system, so I guess—

Mr Runciman: We are not going into a pure no-fault system, as we have heard ad nauseam that the insurance companies are still going to assess fault.

Mr Navarro: My understanding, from what I have read—and I am not a very bright man at the best of times—is that with the present system, things just cannot go on the way they are going now. With this new system, at least there is a light at the end of the tunnel, and it is not a train coming at you either.

Mr Runciman: A light at the end of the tunnel for whom, though? That is the question.

Mr Navarro: For the consumer.

Mr Runciman: I do not believe so. Thanks, anyway.

The Chair: Gentlemen, thank you for your presentation.

Mr Kormos: These brokers will have jobs in the public system, Bob.

Mr Runciman: They hope.

The Chair: Next we have Robert Renaud. Sir, the clerk has distributed a copy of your brief. You have 15 minutes to make a presentation. If there is any time left over, we can get into some comments, questions and discussion. Please proceed.

1500

ROBERT RENAUD

Mr Renaud: Mr Chairman and members of the committee, I would like to thank you for allowing me time to express my views. My presentation is about 10 minutes long. I have made copies which I will be leaving with you, for you to use as you see fit.

Let me start by saying that I do not derive my living by working on car accident cases. I have twice been injured in automobile accidents in this province and I would like to relate to you arguments that you may not hear elsewhere. I am coming forward at this time as a person who has had considerable pain and suffering, but probably not the type that would be considered serious and permanent under the proposed bill.

First, some background on me. In 1984, my car was struck by a vehicle driven by a senior citizen who lost control of his vehicle on a highway. Surgery was needed three times, I was hospitalized for three months, seven days in intensive care and I was off work for nearly one year. I was left with scars and a walking impairment. I struggled for three years to recover.

In 1989, on Highway 69, a 21-year-old driver lost control of his vehicle after hitting the shoulder of the highway, crossed the centre line and hit my vehicle. I was driving. My wife, my son, my daughter and my mother were passengers. We were all hospitalized. My son underwent major surgery for fractures to the face, has permanent loss of hearing in one ear and will have to undergo extensive dental work. I suffered multiple fractures, including a broken hip. I was off work for four months and I am still on crutches and in therapy. I have frequent throbbing pain in my knees, my left thigh and hip.

After being involved in two major accidents, neither of them my fault, I have opinions to express on your proposed legislation. First, the trauma, mental anguish and stress on the family is horrendous. The best of marriages can be strained and marriage breakdown probably not uncommon. Is marriage breakdown a permanent and serious injury?

Second, I earn approximately \$1,300 a week and my loss of earnings is covered by sick leave benefits and a wage-loss replacement plan. In bargaining, my group chose this coverage at the expense of salary increases. Your proposed legislation will now penalize those who arrange for their own security. Is that what you want to do?

If I am incapacitated because of the negligence of another person, then I want my full salary replaced, not just \$495 a week. My sick leave was my protection against illness, heart attack, whatever. Because of the negligence of two people I have lost the protection that had taken me 18 years to build up. They should replace that.

Third, I presume the surgery scars on my thighs, knees, lower leg; plates, pins and bars in my legs and hips; my walking impairment; false teeth for my son; his loss of hearing in one ear; a nearly wrecked marriage; fear that I now have of driving or being on the highway; my loss of optimism; my feeling of guilt whenever I look at my son or wife; the nightmares I have; the feeling of inadequacy that I have, all escape what you would call permanent and serious injury and would not be subject to a damage claim.

At a time in our existence when we have started to pay innocent victims of crime a little bit of compensation, it is inconsistent that we stop paying for the pain and suffering of accident victims. To not pay is wrong.

Fourth, I will have lost 16 months of my life. How much is that worth? Life is short, Mr Chairman. How much is one year or two worth? Being a victim in a car accident is similar to being incarcerated, but worse, because you have this physical pain. You need to work and work and push yourself to the limit if you want to rehabilitate.

Contrary to what doctors said, I did walk reasonably well after my first accident and I will walk reasonably well come this summer, but I will never play soccer in the backyard with my son again, never. My son was not able to play his second year of pee-wee hockey this year and will probably never make a team again.

Fifth, have you ever been in hospital? Stretch it to 13 weeks: a week in intensive care, 43 days on your back, tied with weights on your legs for traction. You cannot get up. We cannot just say to victims, "It happened to you, fellow, too bad." We cannot say that.

Sixth, when some people get injured, they engulf themselves in their pain, complain, wallow in their incapacity, nurture it, milk the system to the extent possible. Another category of people, however, will work like madmen, not even accepting pessimistic surgeons' prognoses, and achieve considerable rehabilitation. Now which type of behaviour do you want to encourage?

Seventh, do not worry about abuse of the system by people wilfully getting into an accident. No one, except suicidal people, walk in front of a moving truck or cross the centre line to cause a head-on collision on the highway. However, you may induce abuse of the system if "severe and permanent" pain has to be demonstrated after an accident, so that the injured can get compensation.

If the injured stands to gain or lose substantially, your legislation will induce undesirable behaviour. The claimant will make extensive use, needless use, of our already strained health care system. Your legislation may create out of automobile accident victims a class of claimants of questionable and exaggerated injuries as appears to be the case under the Workers' Compensation Board. Is that the behaviour you want to entice?

Eighth, the guilty driver is not the only responsible party in the case of car accidents. The government and we, the people, have to share the blame because we did not provide alternative transportation modes and the motor vehicle is everything. We created Highway 69 and there is nothing else. We do not have a "train à grande vitesse" between Sudbury and Toronto, as they have between Paris and Lyons, and with the mess at Pearson International Airport and the cancellation of Air Canada service in Sudbury in February, forget about air transportation.

So we now have to pay the price for tossing all of the travellers on to the congested accident-prone Highway 69. What we save by not providing alternative transportation and underfunding highway systems now has to be paid for in human suffering, in damage claims. We cannot say the cost is too high or that we will stop pain. For over 20 years, we haunted the car industry to improve the safety of their products, and great progress has been made. Now the

transportation system itself needs to be improved. Perhaps improving the transportation system is one way to reduce the costs of injuries.

Ninth, to introduce this type of legislation at the beginning of the decade is frightening. Is this the way you want to start the decade? How will we end the decade? By sending the elderly on to the ice pack? This is not the type of legislation that Ontarians and Canadians have grown to expect from Liberal governments.

Tenth, if it is still your recommendation that there be new compensation for pain and suffering, then there had better be a strong deterrent for the drivers causing the accidents. If there is no compensation, there had better be punishment for offending drivers, or there will be retaliation on the part of the injured. I, for example, have so much anger over these accidents that I can barely contain myself. The desire for retaliation against the other drivers for injuring me and my family keeps cropping up.

Eleventh, no matter what the amount, the injured never considers the amount worth the injury. In September 1989, an Edmonton man, Mr Mihalchan, was awarded the Commonwealth's largest-ever insurance settlement. His only comment was "I would rather be healthy than have the money."

So, if no money is adequate, why should we give anything? Because what they have lost is so very valuable and we are making what can only be considered a token payment, to show that we, as a society, feel for their loss and that we do care.

I can summarize my concerns with the proposed legislation, as follows:

1. Even when a person fully recovers, there may be a lot of pain in a short period of time and the loss of irreplaceable living time.

2. The proposed legislation is of little benefit to those who have arranged to protect themselves.

3. Those who work hard to achieve full rehabilitation will be penalized in favour of those who do not fight the disabilities.

4. There is little abuse of the system now, but your proposed legislation will alter behaviour patterns in such a way as will entice abuse, as well as increase the demands on the health care delivery system.

5. We created the transportation nightmare that is causing so many accidents, so we cannot wash our hands of the results now.

6. This type of regressive legislation is not the type of legislation the Canadian people usually associate with Liberal governments. Surely you

do not want to start the decade with this type of legislation.

7. If there is no compensation, then there had better be deterrents, or you will have retaliation.

8. No amount of money is sufficient to replace health. The small amounts of money we as a society pay the injured is simply a recognition that they have lost something that is very precious and that we do care.

In conclusion, I applaud any attempt to keep insurance premiums at a reasonable level, but please, please do not do it on the backs of the future injured. If legal fees are the problem, then restrict the fees.

You will not hear from the future injured in this debate, because every person thinks he will not become a part of this group. Not so long ago, as a defensive, infraction-free driver, I did not think I would be part of this group. I believe my views express the feelings of the silent, unsuspecting thousands of future injured. I thank you again for hearing me out.

1510

The Chair: Just a question in terms of the two accidents you were involved in. Are either of those two or both of them in the legal system someplace? What is the status of those?

Mr Renaud: The first one was resolved. It is outside the legal system. The second one occurred on 4 September—my birthday—1989 and it takes a year to resolve the physical problem. We get the prognosis at the end of one year, which will be September 1990, so it has not entered the legal system yet.

The Chair: So it is still working its way through the system.

Mr Renaud: It has not been launched, but if I can add some words here, when I sent a letter to Minister Elston expressing my surprise at the legislation, it was not out of concern for myself, the accident having occurred on 4 September and the legislation being introduced, I believe, on 14 September. I just assumed that it would not apply retroactively in my case. I am only stepping forward for the people who will be in my position in two or three years.

The Chair: So in terms of the 1989 accident, it has not been resolved in terms of your taking recourse through the legal system or the court system, or you may come to an agreement outside the court system on that one too.

Mr Renaud: That is right.

Miss Martel: I just want to make a small comment. Thank you for coming here. It is not often that we hear a very personal and very real

experience that people go through. We tend to become, all of us—I say that sincerely—a little bit detached until we are really shaken up and taken back to what the problem is.

I think, though, you hit it right on the head when you ask, would either of your accidents have been considered permanent in nature, and the damage permanent? So, you may or may not be allowed to enter into the tort system. It is a concern that we heard earlier this morning from Dr McMullen, from his perspective as a physician as to how he makes those kinds of judgement calls. I assume that when we have Dr Tait before us, he might make the same kind of statement.

There are so many unknowns and I do not think any of us here is in a position to tell you whether or not you would qualify. It is going to be a hell of a mess for everyone concerned to try to make those calls, if and when this bill is passed.

The Chair: Thank you very much for your presentation.

I have Cecile Rainville. The brief has been circulated to the committee and we are in your hands for the next 15 minutes. Please proceed.

MRS CECILE RAINVILLE

Mrs Rainville: Good afternoon and thank you for letting me stand before this committee. I am 47 years of age. I am presently teaching, and I have been teaching for the past 26 years at a primary school for le Conseil des écoles séparées catholiques romaines du district de Sudbury.

I wanted to appear before the standing committee on general government because I wanted to protest Bill 68. I strongly believe that it is wrong and unfair for a person to do bodily harm to someone and not be responsible to the victim. Monetary benefits do not always compensate, but they do alleviate many problems and worries. In other words, they pay the bills.

Briefly, I will expose what has happened to our family. My husband, Lionel Rainville, was involved in a motor vehicle accident on 28 November 1980. He was the driver of a car when he was struck by a Sudbury Transit bus. Both the driver and the corporation of the city of Sudbury admitted responsibility for the collision. My husband suffered a neck injury. According to the doctor, a specialist, my husband suffered a degree of polyneuropathy of a metabolic nature involving the peripheral nervous system.

Before the accident, we were a happy, caring family leading a good life. Our two daughters were doing well in high school and wanted for nothing. We lived in a comfortable home that

was paid for and that we built together. We had accumulated such things as snowmobiles, boats and motors, a camper, a truck and a car. We had a savings account of approximately \$7,000, with no significant debt.

Before the accident, my husband was a proud man. He was also energetic, well-motivated and a hard worker. After the accident, he was unable to work because of the discomfort associated with his injury. This produced a serious change in the way he saw himself, his moods and his behaviour. He became sedentary, grouchy, demanding and very critical of the family and friends. He also developed sleep disturbances. These profound changes led to a depression, and the depression led to a serious drinking problem. He felt guilty and would not accept that we had to live on a greatly reduced income, which was my salary. He could not accept that he was not able to provide for our daughters' education. They were, by that time, ready for university.

In the first year of university for my daughter Julie, I had to take a loan to pay for her tuition and rent. In her second year, and my daughter Louise's first year, they applied for and received a student loan. Yes, they had to take an apartment because they found it difficult to cope with the negativism of their father. They resented the family's situation, especially when they had experienced a much better relationship prior to the accident. Of course, all the responsibility fell upon my shoulders. It produced a lot of stress. At one point, I seriously thought about leaving the marriage, but after counselling and stubbornness, I adapted and coped with the situation.

In November 1986, after six years, we had a court settlement. After five days at trial, my husband received for pecuniary damages \$135,560.96 and for general damages \$35,000, for a total of \$170,560.96. Under the Family Law Act, I was allowed \$17,500, Julie \$12,000 and Louise \$10,000. The total amount, including the interest, was \$332,833.93.

When you see that amount, it sure looks like a lot of money, but do not forget that it is over nine years that my husband has been without a salary, and he is still unable to work. All he gets is the disability pension from the government of Canada.

The recovery that was made by our lawyer made it possible for the girls to continue their university education without a lot of debt and to give my husband some money from which he can derive an income and contribute to the household. It restored our savings, let us keep our house and it restored our self-respect.

With the new law, I understand that neither I nor my daughters would be able to recover damages under the Family Law Act for the injury to my husband and the loss we suffered as a result. I also understand that my husband, who suffered mostly from emotional and psychological reaction to the accident, would not be able to recover damages for his pain and suffering and would only be entitled to benefits of a maximum of \$450 per week. It is wrong that victims of motor vehicle accidents will not be able to receive full compensation for their injuries and losses.

Mr Runciman: Mrs Rainville, I want to thank you for appearing before the committee. Obviously this is an emotional experience for you. I want to say that the testimonies we have had before this committee from witnesses like you, not lawyers and not people representing the insurance industry, have had the most profound impact on me. I made mention of this earlier, that it has probably been some of the most dramatic and moving testimony that I have heard in my nine years as a legislator.

I think having this kind of testimony is certainly most helpful. You and your family have had first-hand experience. Certainly there have been some problems with the current system, and I think in fact you pointed out the long delays in getting a resolution. Perhaps the resolution was not as adequate as you would have hoped for but certainly significantly better than what you would face under this current legislation, if indeed it is passed as currently structured.

1520

I just want to compliment you really, because you are someone appearing before us who is concerned about future innocent accident victims, the kind of person who has no vested interest and has a genuine concern. I simply want to go on the record as complimenting you and congratulating you and your family for getting over the hurdles and wish you the best of luck in the future.

The Chair: I have Miss Martel, Mr Nixon, Mrs LeBourdais, Ms Munro.

Miss Martel: I will be very brief.

Madame Rainville, je voudrais vous remercier. Je peux imaginer, même si je ne suis pas dans la même situation, qu'il était vraiment difficile de faire un rapport devant nous cet après-midi. Vous avez décrit votre situation, la situation de votre mari, les problèmes avec les filles, etc ; alors je voudrais vous remercier, de la

part de mes collègues et moi-même, pour votre présentation.

Mrs Rainville: Thank you.

Mr J. B. Nixon: I want to thank you too, on behalf of all of us, for coming forward and, as you say, exposing the particular situation that you have had to face over the last six years. I want to assure you that one of the frustrations that I think all of us on the committee—I cannot speak for everyone perhaps—find frustrating are the delays that you experience in an adversarial court system. Hopefully, we will keep that in mind as we go through the hearings.

Mrs LeBourdais: Just briefly, also to say how much we appreciate—it is not easy to come before a public group like this and be as open as you have been. I think we need that kind of testimony so that we do not become, as Miss Martel said a little earlier, too detached.

I guess I would want to point out too that although you feel that the system you had to work under is perhaps the best one and that you did eventually recover \$332,000, I am sure that has not by any means put you on easy street. I am sure from that you still have to deduct legal fees. There are many complications and complexities to the case that you have presented, but in all honesty, I would really want to examine it more thoroughly and in more detail, quite frankly, to see if you would not have been better off under the new no-fault system.

Mrs Rainville: I thought about that too. I know that the existing one is not perfect, but why do you have to take away our right to sue if we have to? They would not even pay the \$140 for the two years that we were supposed to get. We had to fight for that, and that was supposed to be paid. We had to fight for the \$140; how are they going to pay \$450? That is my big problem.

Ms Oddie Munro: I certainly appreciate your comments, which took a lot of courage and I think were done because you want us to share your experience so that we can ask the right questions when we do go through the bill in clause-by-clause.

I would also like to take your situation and just do some thinking about the sort of benefits that would have been accorded on the rehab side and the long-term care. I guess the psychological stress and trauma that all of you have coped with is something that needs to be listened to. When we are looking at the regulations that are attached to the bill, we certainly have tried to put into those regulations the recognition of psychological damage. So I would like to thank you also for

sharing with us your experience, because it is only from doing that that we can get a better idea of what that is.

Mrs Rainville: It is hard. My husband was only about 42 years old when this happened and to say, "You are not able to work tomorrow," it took a lot. He was a hard worker and he provided for everything. He was a construction worker. Now, just for a repair on the house, we have to hire somebody. That is hard for him to accept, and he still cannot accept it. He tries, but he cannot.

His injury was not a major injury, but it is psychological and it is hard to prove. We went to see so many people, so many doctors, so many psychiatrists. The whole family had to go through that. I just briefly described it. I did not go into the details of our life, but it was hard.

The Chair: Thank you very much for a very moving testimony.

Mr Tyler. The clerk has distributed copies of Mr Tyler's brief. The next 15 minutes are yours.

ROBERT TYLER

Mr Tyler: As a retired schoolteacher, I am appalled at the so-called Ontario motorist protection plan. To me, its introduction represents a backward step. I am here to criticize the proposed bill and the apparent implications of the bill only.

Now that my wife and I have started to enjoy the good life, part of the good life includes planning ahead and knowing just what your future expenses, involvements and liabilities are going to be.

I do not understand the reasons for the introduction of this regime. It appears not to be cheaper, nor to provide better coverage than at present. Under the present system, even without fault, I have medical and rehabilitation coverage of \$25,000 over and above what is paid by OHIP. In addition, I can receive up to \$140 a week for life if warranted. If I am not at fault, I can recover my real loss of earnings and pain and suffering that reflects inflation. That is what I pay insurance for.

I expect others to pay for that insurance as well, to provide me with proper protection. These are serious matters and should not be reduced to a political gambit. I pay for proper coverage and expect others to have a similar coverage to pay me for any loss they cause.

The present system of payment through the courts has the best chance of keeping up with inflation. Any government scheme is, by its nature, usually too rigid to do so.

What will I be getting for my increase in premiums? A maximum of \$185 a week and nothing for my excess loss of earnings, nothing for pain and suffering. It seems to me that I am getting very little for my insurance dollar.

To make up the difference between what I might earn and the \$185 a week I would be paid, I would be required to obtain extra accident insurance to protect myself and my family from financial ruin. At my age, the rates are excessive, probably more than I can reasonably pay. I may not be able to pass the medical. You could, of course, set up a whole new insurance scheme requiring companies to insure us regardless of age and health. In any event, the cost of these premiums is really an increase in the cost of my present automobile insurance premiums. To my mind, you must add the cost of those premiums to the cost of my automobile insurance to determine what I am really paying, and that is only for inadequate protection for my family and myself, but I am not certain I can obtain that insurance. In any event, I am left at risk.

You are certainly not helping me. You are helping the insurance companies. They appear to be the big winners. I think you can fool people into believing you are holding premium increases down, but you are really not. If a person has obligations of \$600 a week, for example, to support his family and himself, and you pay only \$185, you have done that person a great disservice. This legislation provides me with coverage at an unacceptably low level. To get the protection I need, I must obtain other insurance.

As a former secondary schoolteacher, I am sorry for my profession. They must use their sick leave credits before they are even eligible for the \$450 payment. If a teacher uses up his sick leave credits in an automobile accident and then gets sick, too bad for that teacher. If a teacher is at fault, at present he gets the exact recovery as the legislation proposes, but if he is not at fault, he can, at present, be properly compensated. This is not fair.

Who really benefits from the scheme in question? The negligent driver, the insurance companies, the politicians—that is who. They can pretend they have kept insurance premiums lower. Who loses? All of us.

Do we need this scheme? No.

1530

I have four questions I would like to ask you, if I may. (1) Have the framers of the bill decided that the so-called trauma is an imagined condition? I will give all four of them and then leave you alone, how is that? (2) Is it too late to

consider leaving the present system alone, without more government control? (3) Has the potential abrogation of human rights implicit in this bill been considered? The bill of rights, Magna Carta, actual revocation of the right to redress for civil grievance are involved.

I bring an example here that probably you people would know more about than I do. It is historical. It seems to me there was a chap who was in the provincial government and who was Attorney General, the late Fred Cass, who started a police bill which gave entry to houses or something without a warrant. I say the late Fred Cass, because I think politically he was never heard from again. I do not want this to happen to this government; I really do not.

Mr Runciman: He is still alive and living in eastern Ontario.

Mr Tyler: Sorry; I take back "the late."

The Chair: I got that as three questions. Maybe I did not count right.

Mr Tyler: I am sorry; you are correct and I am wrong.

(4) Have the framers considered taxing the so-called awards? Maybe you could start off with nine per cent and work down to seven per cent or something like that.

The Chair: It sounds awfully familiar.

Mr Kormos: Earlier today a representative of police officers here in Sudbury gave a submission. Similar problems are encountered by police officers as with teachers, in that they are forced to utilize their disability pensions before any so-called no-fault clicks in.

As well, I mentioned earlier that Ian Kirby had noted that the insurance industry claims to have only lost \$100 million in 1989. Notwithstanding that when they say they lose money, Kruger from the Ontario Automobile Insurance Board says that means they make money, the elimination of the subrogation of OHIP and the elimination of the three per cent premium tax generates some \$140 million, \$143 million for the insurance industry in the first year alone. That more than makes up for their losses. It puts them into a profitable position, if indeed we believe their figures, yet they want to go beyond that. They want to basically give away the farm.

The government has in its possession, we are told, some 23 documents of actuarial figures which may or may not support its position that rates will only climb by eight per cent. Do you have concerns about the unavailability of those particular documents and the fact that the government has declined to make them public?

Mr Tyler: Availability of information is always a problem and particularly so at this time, I think. I am not answering your question directly because I do not know quite how, except to say that getting a copy of the Ontario motorist protection plan was quite a trick for me. Not that it is not in general distribution, but I had trouble with it. I have to say hold on that one because I do not know it.

Miss Martel: Two points: you said we could of course, as a group, set up a whole new insurance scheme requiring companies to insure us regardless of age and health. That is a good point because earlier this morning we heard from Mr Little from Northern Frontier Insurance Co. I disagree with him fundamentally on what he thought the concerns were and what I think the concerns are coming out of my office and what I hear from constituents. We have large numbers of people who, for whatever reason, companies are just refusing to cover. Yet we as consumers have to have insurance in order to drive in this province or we will be charged. So there is a real irony there that has yet to be addressed either in this legislation or by this government, period.

Second, you said, "You can fool people into believing you are holding premium increases down but you are really not." It reminds me of a statement one of my colleagues made some months ago about this government wrestling auto insurance premiums to the ceiling. He was absolutely right because since this group has come to power we have seen at least three increases and probably the fourth when this bill is passed, and that is a far cry from what the Premier (Mr Peterson) promised in Cambridge about three days before the election in September 1987, when he said he had a specific plan to lower rates. We have yet to see what that specific plan is.

Mr Kormos: Was he telling the truth?

Miss Martel: You tell me.

Mr J. B. Nixon: Mr Tyler, thank you for appearing before the committee. I want to ask you a question about your brief, your presentation. You talk about the maximum income compensation for retired persons being \$185 a week. That is correct, but then you go on to talk about the need to make up the difference between the \$185 a week and what you might earn, and I am not sure what you are getting at because if you are working then you are not retired and therefore you do not have the same \$185-a-week cap.

Mr Tyler: My response to your question would have to be, based on my particular

situation, that as a result of having retired from teaching early—incidentally, I was a victim of an auto accident. I was not going to bring that up, but you have sort of prompted me into it. So I retired early. As a result, I have supplemented our income by doing part-time work.

Mr J. B. Nixon: That would mean you are working and therefore—

Mr Tyler: Part-time.

Mr J. B. Nixon: But not subject to the \$185 cap.

Mr Tyler: I do not know.

Mr J. B. Nixon: I can assure you that you would not be and the cap would be \$450 a week net, unless you buy additional wage-loss coverage and it would be higher.

Mr Tyler: Would I not then be at least trying to get that from my insurance company? Would that not be my problem, having to recover that excess or difference from my insurance company? I do not know.

Mr J. B. Nixon: In the present situation, the answer is yes; in the proposed situation, the answer is yes.

Ms Oddie Munro: I think one of the reasons we understood the \$450 to have been arrived at was that it was the average salary or income of more people in the province rather than less, and if in fact affordability and premium costs were important to the client and if \$30,000 was the median, we felt that increasing that \$450 would put an added burden on the number of people who make less than \$30,000. Recognizing that there was a balance, I guess the thought then was that people who are making over that amount perhaps could afford to buy additional coverage. So if we are talking about fairness—

Mr Tyler: That explains it at least. It leaves no preference in the position, does it?

Ms Oddie Munro: I am just wondering what your reaction to that is.

Mr Tyler: My reaction is that what is happening here, it sounds to me, is that I am being forced into a position of—I go back. I have, I feel, a modest or an adequate income, a modest car and a modest insurance policy. Apparently the insurance company is happy with me. They raised my premium a bit this year. They are going to, I am sure, next year.

My question is, since that is between me and them, I am not sure, beyond the mandatory coverage which the government has a certain responsibility to require of me, why must I go further and buy more insurance? I do not want

any more. I have not budgeted for any more. This is my problem. You are saying that because of that, if I lose, then I am really not losing very much. I am not trying to restate what you are saying, but rather that this adequacy—that is not a word you used—that this bill should decide for me what adequacy is. I do not believe that is right under civil law.

Mr Runciman: You know what is amazing about this is that the government members make these comments and they are not one whit embarrassed by them. It is truly amazing. They are talking about significantly reducing your rights and benefits and then sort of pushing you to purchase additional protection on the one hand, and on the other hand are saying, “We are going to raise your eight per cent increase, but you buy these extra benefits.”

They are not talking about all the tax write-offs for the insurance companies. They are not talking about the additional costs assumed by the Workers’ Compensation Board. They are not talking about the cost of the added bureaucracy, which is going to cost all of us. And they have the nerve, the gall, to talk about pushing off additional purchases for added protection.

I want to devote the remainder of my time, because you asked a number of interesting questions—I want to pose one to the parliamentary assistant, and I do not want to hear a harangue on the tort system; I would like to hear simply a yes or no because I think it was a very valid question. We are going through this hearings process across the province, lengthy hearings. Is there any possibility of the tort system being retained as we presently know it, with modest changes and reform and so on? I think that is essentially what you were asking, and I think a yes or no would suffice, hopefully without a diatribe against tort.

1540

The Chair: Just before I do that, I had Mr Ferraro down when you were finished your three minutes. He wanted to respond to the presenter’s question.

Mr Runciman: I will give him the extra time.

Mr Ferraro: When I get somebody asking a one-word question I will give a one-word answer. I would say to Mr Runciman, no.

The Chair: Then he is going to expand and answer the rest of the questions the presenter posed, right?

Mr Runciman: I will pass an editorial comment on that one. I am not surprised by that because what his minister said prior to these

hearings taking place was that essentially there was nothing substantive going to come out of these hearings. They are only having significant public hearings—not as much as we would like to have but what they are having—because of pressure applied by the opposition parties, and really nothing meaningful is going to occur. I think that is a disturbing note here today for all the people appearing who have genuine concerns about this legislation. The bottom line is that nothing meaningful is going to occur, based on comments by the parliamentary assistant and his minister.

The Chair: Mr Ferraro, you had—

Mr Ferraro: If Mr Tyler would like me to respond to his questions.

Mr Tyler: Please.

Mr Ferraro: Thank you. I will bite my tongue on editorial diatribes at the moment. Mr Tyler, you asked if we had considered the trauma aspect of it. I would say to you, mindful of the fact that not everybody agrees, that with increased rehabilitation, medical care and still access to tort, we think we have dealt with trauma in a balanced way.

Is it too late? I think I have responded, but having said that, there have already been some suggestions for minor amendments, if you will, that would be, I think, very helpful, and hopefully the committee will make some. The government is cautious about many impossible amendments that will be forthcoming. We do not think these public hearings, quite frankly, are useless, notwithstanding the opinion of others.

Finally, you asked about the abrogation of human rights and the constitutionality of it. May I say initially that as I am sure you appreciate, every piece of legislation passed by legislatures in all parts of this country is subject to that constitutionality. If someone or some group wishes to challenge it, that is one of the nice things about our democracy; they can indeed take it to court. The government feels the legislation is constitutional.

I will conclude by indicating that Justice Osborne, notwithstanding the fact that he was against a threshold system—I refer you, if you want, to page 618 of his report. In his hearings he looked at a report from Professor Hogg—Peter Hogg, I believe his name is—who is a renowned constitutional professor and lawyer, and also a gentleman by the name of Finkelstein. They were both hired by the Insurance Bureau of Canada.

Ms Parrish: Professor Hogg was retained independently by Mr Justice Osborne. Mr Finkelstein was retained by the IBC.

Mr Ferraro: Thank you. In any event, both reports were looked at by Justice Osborne and notwithstanding his own personal opinion, he remarks that he is generally in agreement with the conclusions and analysis of both Professor Hogg and Mr Finkelstein, and that is that they are constitutionally valid.

Mr Kormos: But that remains to be seen.

The Chair: Thank you, sir, for your presentation. We had some of the answers.

We have Kimberly and Sherry Lynn Gauthier. I believe someone else is going to be coming with them as well. I do not see someone else.

Ms K. Gauthier: I think he is at the back.

The Chair: Your lawyer had originally asked if he could come up with you, and we said no problem. There he is.

Mr Lalande: I certainly do not mind. Thank you very much.

The Chair: It is entirely at their beck and call. The clerk is distributing copies of your presentation. Maybe you could just identify yourselves, and the next 15 minutes are yours.

KIMBERLY GAUTHIER AND SHERRY LYNN GAUTHIER

Ms K. Gauthier: My name is Kimberly Gauthier and this is my sister Sherry Lynn Gauthier. I am going to speak on behalf of both her and me. I just want to say that 31 October 1981 my whole family was in a car accident. I was 11 and she was 10. I am 20 years old now and she is 18. We were all injured but not seriously. We attended our lawyer's office with my parents and siblings and my lawyer, Mr Lalande, settled my case. We received money, not a great amount but we received it on 3 November 1989. The accident disturbed the whole family, all of us. The injuries were not great, but each one of us was compensated for them and that was for the pain and inconvenience we all went through.

I found out that the provincial government wishes to pass a resolution that would deny children, as I was then, the compensation for pain and suffering. I find it very unreasonable. I was a child then and I received money. I think it was only fair that we received something for the accident. I think there is a psychological element where injuries are handled in an easier way when the case is settled or some compensation is paid.

Because I was a minor involved in the accident, I realize that it is important for infant victims to have access to the court and get compensation. I felt strongly enough about this that I wanted to attend and speak to you today

about it. There should be some protection for children under the new law and there seems to be none just because of the fact that they are children. I think that is about it.

Mr Kormos: These amounts I presume were kept in trust for you until you reached some age.

Ms K. Gauthier: Yes, till we reached 18.

Mr Kormos: And they collected interest while they were being kept in trust?

Ms K. Gauthier: Yes.

Mr Kormos: Obviously somebody has explained to you that in this new legislation kids under 16 are right out of any consideration for compensation for pain and suffering.

Ms K. Gauthier: Yes.

Mr Kormos: Even if they are innocent victims.

Ms K. Gauthier: Yes.

Mr Kormos: Victims of drunk drivers.

Ms K. Gauthier: Yes.

Mr Kormos: You are also being told that there is some sort of tradeoff here, that if we do not take away compensation for victims of drunk drivers for pain and suffering and for loss of enjoyment of life, then somehow we cannot pay these so-called no-faults. I want to tell you this, and maybe lawyers have already told you this, that we have had no-fault benefits here for a long, long time. The amounts that were being paid out have become inadequate because they were not indexed, just like the ones in the new schedule are not indexed, but we have had them for a long time, so there is nothing new about it. What is new about this legislation is that there is no compensation for the vast majority, 90 or 95 per cent, of innocent injured victims.

You tell us your injuries were fairly modest.

Ms K. Gauthier: Yes.

Mr Kormos: Some of these people who are promoting this legislation—I have to tell you it is primarily the insurance industry and the Liberal government. There is an interesting little rapport between the two there, an interesting little relationship, but it is primarily those two folks who are promoting this legislation. They are going to deny compensation to the vast majority of innocent injured victims and they are trying to create the impression that it is just the little, piddly injuries that are not going to be compensated, like the sprained toe, the torn fingernail. Yet it remains that injuries like broken backs, broken legs, broken arms and fractured skulls are among those injuries that are not going to be compensated, that the poor victims who suffer

those kinds of injuries are not going to get a nickel, not a penny, for their pain and suffering.

You can recall the discomfort, anxiety, pain and interruption of enjoyment of life that you had with modest injuries. I ask you to just think about the youngster your age, as you were, who finds herself—a young girl as you were when you got injured—immobilized in traction for months and months at a time. You are right. The legislation is totally unfair, but it is going to make incredible profits for the insurance industry. If you have any nickels or dimes in your bank account, buy some insurance stock if it looks like this stuff is going to be rammed through. The Liberals want it to go through real bad.

Interjection: To pay for their losses?

Mr Kormos: They will do fine.

Mr Runciman: I want to thank you for appearing before us today. I have made this point on a number of occasions, that the witnesses who appear before us are not lawyers and are not affiliated with the insurance companies, but are people who have genuine concerns for innocent accident victims and are sharing really their experiences, as you have here today.

1550

As Mr Kormos pointed out, your injuries were rather modest, but you did indeed get some compensation for them. I think the point he made has to be re-emphasized, that there are many young people under this legislation who could suffer rather serious injuries and go through a great deal of pain and suffering and not receive any compensation whatsoever.

Since your lawyer is with you, I am just wondering if he might like to comment on his experience in perhaps dealing with young people. I do not know if you have a heavy case load in respect to personal injury, but also with respect to your dealings, how many of these things really end up in courts, how much red tape is there, or do you find generally that these things are handled rather quickly in the current system?

The Chair: Maybe you could identify yourself for Hansard.

Mr Lalande: Yes. Randall Lalande.

I find that the cases go fairly well. People who have been injured come to the office, and here is a prime example where the injuries are not all that serious but very important to the people who were injured and who come to the family lawyer and want some form of redress, some form of compensation.

Here is an example of a case that did not go to court but which received court approval. With

that, the case was settled. The settlement was approved by the court. The money was paid in trust. We are not talking about a lot of money, but the receipt of this money was of great benefit to these young persons at a later time when they needed it to go to university.

Mr Runciman: What was your fee out of this, if I might ask? Approximately.

Mr Lalande: I cannot recall exactly what it was; maybe they do. You see, I acted for the whole family. The father is here too. I acted for the father, the mother and the children, so the fee would have been roughly proportionate to the size of the case. If you use a rule of thumb of roughly 15 per cent or whatever, the insurance companies will very often pay us a percentage towards costs in settling these cases. The case was fairly nicely settled.

The difficulty I have is, what am I going to do when people come to me with their children and they say, "Look, my kid has a broken leg, a fever, has been in hospital for two or three months." We are not talking about a threshold. We are not talking about a monetary loss. What does the kid get?

Mr Kormos: Zip.

Mr Lalande: Nothing. This is completely unsatisfactory. When I explain this to people who come to my office, they say: "We didn't think this was what no-fault was about. We thought no-fault was we were going to pay less money for the insurance." Then surprisingly they say, after they understand what the legislation is about, "They can't do that."

It is just an unacceptable situation where an innocent child as a victim is going to get zip and not have any redress to the court. I find it unacceptable.

The Chair: Just a question: What was the time frame between the accident occurring and the settlement being paid into the court?

Mr Lalande: I am speculating, but we are probably talking a year or so. Twelve months.

The Chair: Okay. Thank you.

Mr Lalande: It is not a big case, but it is an important case. It is one of those 90 to 95 per cent of cases that is going to get tossed if this legislation goes through. I hope that the people become aware of what the legislation is about, because what I find is everybody I talk to does not know what it is all about.

Mr Runciman: That is what they are counting on.

Mr Lalande: When they do find out what it is about, they are opposing it.

I heard a comment a while ago that really distressed me, that the results of this committee might not make a difference. I find that very difficult. Somebody mentioned a democracy a while ago. I hope the MPPs listen to their constituents on this one, because it is a very important one.

The Chair: Thank you. I have Mrs LeBourdais and Ms Oddie Munro, a minute and a half each.

Mrs LeBourdais: First of all, I would not assume that that is so. I think I would like to wait until the end of these hearings when deliberations do take place before we assume that is a fait accompli.

Mr Lalande: Pardon me, but I thought—

Mr Ferraro: He asked about governments there. If I have misled you, I apologize, but I thought his question was, is the government going to change its mind?

Mr Kormos: So it does not matter what the committee does, the government is going to go ahead with it anyway. That is exactly what you said.

Mr Lalande: I was thinking that this committee was going to have a strong voice in taking these representations back to the government. If you heard it enough times that the public does not want this piece of legislation, I hope you are going to tell them, "We don't want it."

Mr Kormos: But it is what the insurance company tells them, not the public.

Mrs LeBourdais: If I might just continue, I think it is worth pointing out to the girls too—to Sherry Lynn and to Kimberly Gauthier, who have come forward to us today—that under the present system too you were fortunate enough to win, in effect, but there are many people who perhaps are not at fault either who, through the tort system, through the court system, go through litigation, may take a great deal of time, may go through a lot of expense and still not win a cash settlement or a settlement in proportion to what they feel they should have obtained.

There are many examples of people who get great awards for something relatively minor, and the reverse is also true. You, fortunately, seem to be pleased with what you got. I think you should also be aware that under the system we are suggesting, in fact, you would not be able to sue for pain and suffering because of your age or because you do not meet the threshold, but all your rehabilitation and medical care would be taken care of.

I would hope that you understand that the basis of this policy, first and foremost, is to begin to get people, regardless of their age, back on their feet first.

Mr Lalande: Am I entitled to respond to that?

The Chair: Sure.

Mr Lalande: Let it be known that under the current system they did get compensation, and using their example—and that is why they are here—under the proposed system, they would get nothing.

Mr Kormos: Zip.

Mr Lalande: You are not disagreeing with that, are you?

Mrs LeBourdais: I am not disagreeing with that.

Mr Runciman: She is just talking around it, that is all.

Ms Oddie Munro: I am very glad the young ladies are appearing, because it takes an awful lot of courage to do that. I believe this committee is listening in answer to your concern.

On the rehabilitation side, we have been arguing for an expanded definition of what a psychological trauma would be, and in terms of the competent professionals who would be giving psychological counselling and rehab services, I think there is a body of knowledge and some very well-meaning rehab professionals out there who will be able to give victims good services which will mean something in terms of mental illness, in terms of thinking that you have received a service.

So although I recognize that you are arguing that some rewards—dollars—count, I think too, for people who have gone through successful rehabilitation, the psychologists themselves and people treating also are able to work with people so that they are to go back to their normal lifestyle. I certainly would not want to go through what you have gone through, but I do believe that we have some very capable rehab people out there also who know how to work with you. I thank you for coming.

Mr Lalande: If I may, this was not a rehabilitation case at all. I was not talking rehabilitation, but given that rehabilitation has been brought up, we do have a form of rehabilitation now under the current no-fault system which I find to be quite satisfactory and which they could have taken advantage of in those circumstances back then, without this proposed legislation. The fact that it has been increased to cover bigger dollars is a good thing,

but in my 15 years of practice, I really have not had a client use up the \$25,000 yet.

Mr Kormos: Oh, really? That is interesting.

Mr Lalande: It is not a rehabilitation case and I do not think rehabilitation has anything to do with it. What these people have lost is their right to go to court and any right at all to compensation for pain and suffering. That is the tragedy here.

1600

The Chair: Mr Lalande, ladies, thank you for your presentation.

Doctor Tait, your presentation is being circulated by the clerk. The next 15 minutes are yours.

DR J. HOWARD TAIT

Dr Tait: My name is Dr Howard Tait. I am an orthopaedic surgeon and I wish to present the paper that is before you. I will read it first.

In regard to the Ontario motorist protection plan, it is my feeling as a physician that this legislation will ask the examining physician to decide whether or not the patient can proceed with a legal function. In his decision as to whether the patient has a permanent injury or disfigurement, the physician is then deciding the eligibility of an individual to proceed with his tort claim. I do not feel that that should be a physician's responsibility.

Certainly the average physician, and even a physician specializing in orthopaedics, receives very little training in the legal ramifications of various injuries and, more practically, in their long-term financial significance to the patient. Even the present reporting system must rely on many subjective decisions by the physician. The subjective decisions can be affected by many parameters which would be unacceptable in any other type of factual presentation. However, this is always balanced in the end analysis by an impartial judgement which, although in itself may not be perfect, can hear various opposing arguments as to the degree and severity of the various injuries.

It would seem that under the new rules, the physician in his presentation of his evidence would be making a decision as to the compensation of a patient without an impartial hearing. At the same time, there does not seem to be any room for correction of errors. It would certainly seem that this type of decision would be very difficult to sustain by the patient's own treating physician. One might be sorely tempted to weight one's decision to achieve whatever becomes the least troublesome outcome. The patients having their physicians decide against them will certainly, in many cases, feel that their

rights have been denied by the physician. The physician will then take the brunt of what will be many complaints. This will create a generally unpopular atmosphere in which to function.

It can be seen from the above that one of the major dangers of this system is that many physicians will be thoroughly tempted to simply abnegate their responsibilities in these matters. They will then refer the patient to someone else. All of this, needless to say, will cost significant moneys to the health care system and continue to tie up ever-needed resources; this occurring in an effort initiated by the patient and, one would think, by his solicitor, to prove the presence of a permanent disability before whatever time period or limitation is up.

The present legislation, as it is stated, gives what could be described as a broad path in a troubled sea of darkness. I suspect that the first few months, if not years, of operation of this plan will be indeed utterly acrimonious, as medical and legal precedents are developed to further define the exact meaning of the legislation. Every effort should be made to avoid this by developing exact definitions for at least some of the more common complaints and by developing well-defined, statistically proven protocols. This should be subjected to public, legal and medical scrutiny and agreed upon before the plan is ever allowed to commence. I cannot see where the development of these protocols is included in any information about this plan, nor can I see that this could occur in the short space of time allowed for the development of this significant change in the laws of Ontario.

In summary, I feel that this plan requires too much of a physician and, at the same time, provides inadequate guidelines in order to protect the physician from future acrimonious claims by the patient or his solicitor. I also feel that this will soon be recognized by physicians and lead to their abnegation, in many cases, of their proper responsibilities.

Mr J. B. Nixon: I have two questions. The first has to do with what you mean by a well-defined, statistically proven protocol. What sort of material would it contain?

Dr Tait: I think that they have developed, for acute injuries, injury severity scores. I believe that if you are going to have a plan which is as complex and asks such a complex question as this one, it might be necessary to actually develop a protocol which could be computerized, or however one would like to do it, to produce an injury severity score. That this would take a fair amount of work is obvious, I think, but if you

could create a protocol like that, into which people would simply provide the information, provide the physical findings, and the decision or rating on the degree of injury of the patient could then be assessed, this might clear up a lot of problems.

Mr Runciman: I have a second question. You talk about the physician being put in a situation where he or she would have to make a decision as to the compensation of a patient without an impartial hearing. I am not sure under what circumstance that would occur.

Dr Tait: As far as I can see from the legislation, at some point the physician or a group of physicians is going to be asked if the person has a permanent, severe disability.

Mr Runciman: But that would be a matter that would go before the courts.

Dr Tait: No, it would not, would it?

Mr Runciman: Yes, it would.

Dr Tait: The legislation is in two parts. There is one part that says that, and then the second part says that before the courts it can be used as a defence.

Mr Runciman: I think those types of matters are always litigated in any event, the nature and extent of the injury, but perhaps the ministry official could help to clarify that.

Dr Tait: There should be some clarification, because then every case is going to end up in court on which there is any debate at all.

Ms Parrish: The legislation clearly provides that it would be a judge who would make the decision as to whether that specific injury crossed the threshold. Obviously medical advice would be called, as it is now, to assess various elements of an injury, but in the end it would be the judge who would decide whether or not the person met the legal test, not the physician, although clearly physicians would be called to give evidence.

Ms Oddie Munro: The no-fault benefits which will go to the client are different than, and I would say that they are significantly better than, what is currently available under many of the medical and rehab long-term care and other indicators, including child care benefit. Have you been involved on the rehab side?

Dr Tait: Not really, no.

Ms Oddie Munro: Do you know other of your colleagues who have been involved in any shape, way or form on a team that is dealing with rehab of a client who had been injured in an automobile accident?

Dr Tait: My tendency is to deal with them immediately after the accident and subsequently, but not really as a true rehabilitation.

Ms Oddie Munro: Do you think there is any value to those services?

Dr Tait: It is very difficult to assess. I really cannot answer that.

Ms Oddie Munro: If we have professionals who are involved in it, there surely must be, I would hope.

Dr Tait: We have one specialist in rehabilitation medicine—actually two—in the whole city, serving an area of 200,000 people. Their involvement by necessity has to be fairly minimal.

Mr Runciman: I am curious about why you are appearing here today. Is it simply as an interested physician, or do you do specific work in this kind of field? I am just curious about why you are here.

Dr Tait: Because I felt that this decision, as I read this legislation, and I am still very worried about that, would lead me into a situation where I had to make decisions that were going to be on an insurance tick-off form that said, "Does this patient have a permanent and severe disability?" If this is going to appear in my office one of these days, I do not want to make that decision on an insurance tick-off form.

I am now told that every one of these cases is going to be judged by someone else. Since I have been in practice for 10 years and I have only appeared in court for two or three cases involving medico-legal motor vehicle trauma in that period of time, I am not sure how that is going to happen.

Mr Runciman: That is a very good point. I am curious about this whole business. We have had a couple of doctors appear before us, one chairing a group called People Against the Insurance Nightmare. What interests me, and all of your testimony interests me, is your reference to the significant moneys to the health care system and continuing to tie up needed resources.

1610

I guess that is certainly an implication that has not been discussed at length in this committee and it is difficult for you to quantify that. I am a little curious about why perhaps the Ontario Medical Association has not taken a close look at this and perhaps, up to this point anyway, has not intervened in the proceedings. Are they looking at it, do you know?

Dr Tait: Actually, Dr McMullen is the chairman of the district health association and

our physicians' association and is the Ontario Medical Association representative. As far as I know, and it is purely hearsay, they just have not looked at the legislation yet. We are going to look at it probably by the time the committee meetings are over.

Mr Runciman: That will be helpful.

Dr Tait: And having found that out, I felt I should say something.

The Chair: Miss Martel, a minute and a half.

Miss Martel: Dr Tait, I want to return to this question of your being put into the position of having to determine if someone is permanently and seriously disabled, etc. I think that regardless of what the legal niceties are, that is exactly the position you are going to be put into: a tick-off on the bottom of the insurance form, just like you have to tick off on the bottom on the workers' compensation form right now. That is why many physicians in this city do not want to deal with workers' compensation any more. They do not want to be put into the position of making those kinds of judgement calls.

Let me go back to that point and ask you how you really feel about being put in that kind of position when, from what we have seen of the legislation, you do not have much direction or very many guidelines to go by, because I think that is exactly the position you will be in.

Dr Tait: What I did, rather on the side, was conduct my own little poll, since polls are in, and I asked many orthopaedic surgeons and rehab people to look at these definitions and say if they could work this out. The argument is probably still going on somewhere in the halls of the hospitals in this city because they could not come to any agreement on what it meant.

I find problems with this legislation. If it is all going to have to go before a judge, then the judge at that point and not ourselves will have the problem. But I have severe problems with the way it is written and the way the question is asked. I think if you are going to have something like this, it would be much better to decide what is meant by severe, permanent disability. That is my major criticism technically with the legislation.

Mr Kormos: Much ado is being made about the sometimes delay in a system wherein innocent victims are entitled to compensation for their injuries. My understanding is that often-times injuries are of such a nature that it takes some time to do an accurate diagnosis and prognosis of the injury, to determine whether an injury is going to affect that person for the rest of

his life or whether indeed he is going to recover, any number of things. They involve any number of other health care professionals in addition even to yourself. Is that a fair understanding of the medical role and the time it needs to properly assess an injury and the impact of that injury on a person's life?

Dr Tait: It is and it can involve many people, but really the medical role in dealing with a patient is directed towards getting the patient better, to getting rid of his pain and getting him walking like a normal person. It is not really directed towards assessing how long it is going to go on to do that bit of prophesy. That is more of a legal question. I think this is where a lot of the problems have arisen in the past and they are certainly going to arrive with this legislation. Physicians really are not set up to do that kind of thing. That is where a big problem arises really.

The Chair: Doctor, thank you very much for your presentation. Mr Callaghan. The clerk is distributing copies of this brief. The next 15 minutes are yours.

TED CALLAGHAN

Mr Callaghan: I would like to welcome the members of the committee to Sudbury and I would like to thank you for this opportunity to speak to you today.

I am here today as what I like to call a representative of the middle-class person. I work at Inco. My name is Ted Callaghan. I have lived in Sudbury for 20 years and I have worked at Inco for 20 years. I have come here today because I really feel that this bill, in conjunction with the government and the insurance companies, is once again going to take a slap at our pocket-books. I am really, really distressed about that.

In my brief presentation today regarding this topic, the proposed introduction of the new form of no-fault auto insurance, more commonly known by the bureaucracy as the Ontario motorist protection plan, let me state clearly that I am personally in favour of some form of no-fault auto insurance. Maybe I should say I was in favour until I saw this thing.

I am appearing here today to tell you in no uncertain terms that I have a healthy dislike for the proposals that are presently included in this bill. Shortly, I will list my more pronounced dislikes and offer some suggestions for change that could make it easier for me to endorse Bill 68. Before I proceed with my list of dislikes, though, I would first like to talk about the perception of a number of middle-class citizens like myself, a perception by the way that I agree

with, that in today's society the victim is the forgotten one when some misfortune strikes us personally or our family or our friends.

I believe this proposed no-fault scheme is just another example of a law that will make victims out of everyday middle-class driving citizens. What will compound this issue and show the real unfairness of this proposed law is if you are unfortunate enough to get into an accident that is not of your making, whether you get involved in an accident with a bad driver, and as we know there are lots of those around, or maybe with someone who has just had a momentary lapse of attention. You still become a victim of someone else's mistake. Now with this proposed law you will really find out what being a victim is all about.

The first thing you will find out is that the proposed section regarding lost wages entitles people to recover only 80 per cent of their weekly wage to a maximum allowance of \$450. A person does not have to be a math professor to know that anyone who makes a yearly income of approximately \$25,000 or more will be losing money. Personally, in my case, if I had the misfortune to be involved in an accident, I could very easily lose \$9,000 to \$10,000 if I were to be out of work for one year. I firmly believe that if I lose time from work as a result of an auto accident, then I should be entitled to receive any and all moneys lost as a result of this accident, especially if it has resulted from someone else's negligence.

To make matters worse, this bill has included a clause that this amount of \$450 cannot be topped up so as to reach what I actually earn per week. To give this committee an example of how bad this clause is, I would receive from my employer's insurance \$375 per week. My car insurance then would be responsible for making up the difference of \$75. I say to this, shame. The benefit plan that my union negotiated for me and my employer Inco pays to me now becomes a subsidy for some insurance company. To me, this makes no sense whatsoever. I may be in favour of subsidizing certain things in today's society, but I can tell you emphatically today that insurance companies are not on my list.

The next thing I would like to address is in the area that deals with compensation for pain and suffering. To me, it is almost impossible to think that a government for the people and of the people would suppose for one minute that as a result of an auto accident, there will be no pain and suffering great enough to sue for until you have reached the stage defined in the proposed

legislation of having, and I quote, "a permanent impairment of bodily function."

When I learned that also excluded is a person's right to sue for a psychological and emotional trauma, the threshold becomes too high and defies all common sense, especially when applied to the victim of someone else's bad driving practices. This proposal, I say, is a gift to the insurance companies and just forces accident victims to subsidize the insurance companies of Ontario.

Lastly, the idea that the weekly compensation and other proposed no-fault benefits, such as long-term care, are not indexed for inflation protection is not right. I know that the current \$140 weekly wage benefit has been in place since 1978, and never once was this amount increased by insurance companies so as to reflect rising costs in this day and age.

With this said, I have no illusions about the proposed new weekly wage amount of \$450 being raised voluntarily. The only way such benefits will get raised is if they are included in the statute now. Our elected Liberal government should pass no law that does not include this basic consumer protection.

Now I want to comment on the one main thing that this present Liberal government has always stressed when it talked about no-fault insurance. The one thing it was always talking about was keeping insurance rates at a reasonable level. This present plan holds no guarantees of stable auto rates. Mr Elston has consistently refused to give firm commitments as to how much control this scheme will have on insurance rates, being always careful to present us only with estimates.

To add insult to injury, we are now being told by Mr Elston that what is being presented to the drivers of Ontario is only a minimum package and if we wish better coverage, we must purchase higher-priced packages. If this is the case, we may as well leave the present system in place, as Bill 68 will offer no price relief whatsoever. If auto insurance rates cannot be controlled under no-fault, as promised, then I can only say that this entire exercise is a complete waste of time and that maybe we should be moving in the direction of public-controlled auto insurance.

1620

I would now like to move along to four suggestions for improving the more glaring shortfalls that I feel are in this bill.

1. In the area of wage compensation, the proposed figure of \$450 a week is too low. I suggest this amount be increased to at least \$600 per week, a figure that is in place presently in the

province of Quebec. This, combined with the inflation statute that I mentioned previously, would make this a figure that would represent something that would make it look like a bill that was written in 1989 instead of 1969. The figure of \$450 is ridiculous.

2. I would like to increase the threshold level at which victims can sue for pain and suffering. To think that this threshold level is the highest of any province or state in North America is, to say the least, a dubious distinction for the province of Ontario and for the Liberal government of this province.

3. The amount for long-term care, which has been set at \$50 per day, is too low. Let's get serious; \$50 a day towards providing long-term care is unrealistic and must be changed to reflect today's cost of such services.

4. The fourth thing I would like to discuss has to do with reducing accidents. This bill does not address this issue in any way. Study followed by legislative action must go hand in hand to combat Ontario's high accident rate. Without such action, accident rates will not be reduced, making any new type of insurance plan ineffective and costly.

In relation to this issue, I believe consistent speeders, drunk drivers, careless drivers and drivers who operate motor vehicles with no licence must be treated harshly and shown in no uncertain terms that to drive in Ontario is a privilege and not a right. Also, people in this province, and I am not just referring to teenagers, can get licences too easily. The present system must be toughened up. I believe by doing these things immediate results may not be noticed but these changes could ensure better drivers and remove bad ones over time.

I would like to speak generally now to this bill. I believe it is safe to say that if this bill becomes law without major change, the Liberal politicians of this province will face the wrath of Ontario's driving public in the next election, and deservedly so. Recall, please, when our Liberal government got all excited about auto insurance premiums.

The year was 1987, election year, and the Liberals of the day were not just interested in rising premiums alone. This issue was just what election campaigns are made of. Joe Public was as mad as hell at insurance companies because the rates were going crazy. The New Democratic Party of the day was screaming for lower premiums and trying to talk the Liberal government into reining in all these greedy insurance companies. In 1987 that was all well and good in

the eyes of Ontario voters. Liberals got elected everywhere. One of the reasons they did was because of no small amount of insurance company bashing, much to the delight of Ontario drivers and voters.

Now, though, the year is 1990, and what are we really getting? Is it the great protection and lower-priced no-fault insurance plan we were promised? I say not. In my eyes, it is a bill that resembles something written by the insurance industry for the insurance industry. Once created, it was given to government policymakers, who carefully touched it up and then presented it, as is, to Liberal MPPs, who in turn were told to run with it, as is. It was the belief that Joe Citizen would accept Bill 68, because it was known that the insurance industry would be right there doing the old hard sell. Drivers of Ontario are really getting the hard sell all right, but hopefully no one is buying anything that resembles this package until some real, basic changes are incorporated.

In closing, I would now just ask this committee to consider some of the things I have talked about in this presentation and also some of the things other people in organizations have been saying and to please go back to Queen's Park with a clear message: that this Bill 68 that is being proposed must be fixed up in such a way as to reflect what people in Ontario have asked for when the subject of auto insurance became an issue to Ontario motorists.

The Chair: Thank you. I have Mr Ferraro on a point of clarification, Mr Runciman, Miss Martel, Mr Kormos, Mr Nixon and Mr Ferraro.

Mr Ferraro: Mr Callaghan, as I am sure all the committee members would know, at the bottom of your page, the last paragraph, where you indicate the amount of money that you conceivably could get back from the no-fault benefits, your indication is that you would only be liable to a maximum of \$450 and that they could not be topped up. That is wrong. You are entitled to 80 per cent of your gross salary. By way of explanation or example, if you make \$1,000 a week, hypothetically you would then be eligible to get \$800 a week. In this particular case, to use your figures, it would come in the form of \$375 from your own insurance plan and \$425 from the no-fault benefits for the \$800 figure, and I point out to you that the \$425 is after taxes as well.

Mr Callaghan: I would just like to say that anything I have read on this bill was that the maximum I can get is \$450, up to 80 per cent.

Mr Ferraro: That is not true. It is 80 per cent of gross earnings, and the top-up provision is clearly indicated—maybe not so clearly indicated.

The Chair: Mrs LeBourdais wants a point of clarification.

Mrs LeBourdais: I believe, if Mr Callaghan is being consistent, there is an error in his presentation on page 3, point 2. I think you want to say, "I would like to either decrease or lower the threshold." Would I not be correct?

Mr Callahan: That is correct, yes.

Mrs LeBourdais: Thank you.

Mr Callahan: Mr Runciman, Miss Martel, Mr Nixon. Mr Runciman, you have three minutes.

Mr Runciman: Mr Callaghan, I appreciated your testimony and enjoyed the way you presented it very forcefully. I guess I am curious about someone like yourself. You described yourself as a middle-class citizen in Sudbury, an employee of Inco. Are you a politically active person?

Mr Callaghan: No, I am not.

Mr Runciman: So you are not supportive of any particular political party. You are really here because you have gained some awareness of this legislation and you are genuinely concerned about its impact on innocent accident victims in the process.

Mr Callaghan: That is correct. I would like to describe it more than that. I think of myself as a middle-class citizen who is getting assaulted once again for more money. Every time we as middle-class citizens turn around, they are just after more money all the time, taxes and all the rest of it, and here we have the Liberal government proposing this Bill 68 which is giving the insurance companies the right of way to come and clobber us again some more. This is why I am here today, because that really distresses me. I am just fed up, fed up all the time with pay, pay, pay, pay, pay. That is all we seem to do as middle-class citizens. I do not know when people are going get mad and do something to stop these things that are going on. It is just so aggravating and so irritating. This is the reason I am here today, because I feel this bill is just an assault once again on my pocket as a middle-class citizen, and Joe Blow out there, with no job or anything, tearing around in the car half drunk, runs into me, and "Too bad, Charlie Brown." That is exactly what this bill is.

Mr Runciman: I simply want to concur with your concerns. I wish people would be more

upset. We have seen taxes in the last four years, provincially, raised over 105 per cent. I have laid the blame for this legislation on the doorstep of David Peterson because of the rather foolish promise he made in 1987 which he was unable to back up. As a result, we have been in this chaotic situation in auto insurance for the past two and a half years.

I think some of the problems in respect to the way this legislation is being dealt with, tax increases and how this impacts on the poor or the middle class, the elderly, the less fortunate in society, is a reflection of Mr Peterson's own upbringing.

I know that offends some of the Liberal members, but we are talking about a gentleman who has never had to work a day in his life, who was born into very comfortable circumstances, inherited millions of dollars and really does not have an understanding. He has never worked shift work. He has never been down the shaft of a mine. He has never had to really work and be concerned about meeting mortgage payments or putting food on the table. That is the kind of gentleman we are dealing we are dealing with as Premier of this province. I am being polite.

Miss Martel: Mr Callaghan, I just want to return to a point that you made earlier, and that was concerning the \$450 a week which you said on the bottom of your first page cannot be topped up. The parliamentary assistant tried to tell you, and did tell you in fact, that, "Yes, it can be topped up." I should point out that the top-up comes from your own insurance that the Steelworkers negotiated on your behalf, and God forbid, do not get hurt again or have a heart attack, because you will not have anything left after you try to top it up so that you can make your mortgage payments, etc.

So watch the mealy-mouthed wording around that, because in fact you are subsidizing what the insurance companies in this province should rightfully be paying to you because you pay premiums.

Mr Callaghan: I am well aware of that.

Miss Martel: Just one other question: What are you looking for when you go to get auto insurance? I know in my constituency office the complaints we are having about being cut off, cancelled for no reason, excessive premiums which they cannot understand. What do you think the middle-class citizens you came here today to represent are looking for when they go out and say, "I need auto insurance because, by law, I have to have it," and they start shopping around?

Mr Callaghan: Let me refer to the province of Ontario. What people want is what we were promised in 1987. We were promised that they were going to try to keep insurance rates in line, try to keep them in tow, and that we were basically going to get the same kind of coverage that we get from the existing system as we have it now.

Under this system here that is being proposed in this Bill 68, I feel that we are losing protection. The only way to acquire more protection is to pay more money. In other words, I am sure all the insurance brokers here today are just tickled to death, because now not only will they be writing up auto insurance but also they will be writing up disability insurance that I am going to have to buy in order to bring up the coverage to the same standard that I have today.

Mr Kormos: What happened to Peterson's promise?

Mr J. B. Nixon: Mr Callaghan, thanks for coming before the committee. On page 3 of your brief, you make four recommendations. Three have to do specifically with this bill. Without asking the parliamentary assistant, I can tell you that he would tell you that there are many initiatives and actions being taken to prevent

accidents: hiring new Ontario Provincial Police officers, tripling the fines for speeding, so on and so forth. We will not get into them. The balance of your three recommendations deal with improvements to what I would call the compensation side of this bill: increasing the \$450 to \$600, lowering the threshold, and the long-term care. Basically—I am just asking—you are saying the basic scheme is okay, but the compensation side, in your view, is too low.

Mr Callaghan: That is correct. That is the one thing. Like I said, the glaring shortfalls of this bill are the compensation side, yes.

Mr J. B. Nixon: Okay, thanks.

The Chair: Is Dr Mitchell in the audience? I do not see Dr Mitchell. He was the last delegation before the committee today.

Before I adjourn, I would just remind the committee members that the bus will be leaving outside the hotel at 6:30, and for those who will not be travelling on the bus, it is Air Canada, flight 524 leaving at 8:15 this evening. The committee stands adjourned until tomorrow morning at 10 o'clock in Toronto.

The committee adjourned at 1634.

CONTENTS

Monday 22 January 1990

Insurance Statute Law Amendment Act, 1989	G-433
Loi de 1989 modifiant des lois concernant l'assurance	G-433
Sudbury and District Medical Society	G-433
Maria White	G-435
Sudbury Regional Police Association	G-437
Jean-Guy Brouillard	G-440
Northern Frontier Insurance Co	G-442
Inco/Falconbridge Pensioners	G-446
Frank Mantello	G-449
Sudbury District Law Association	G-451
All Nations Church	G-457
Afternoon sitting	G-460
County and District Law Presidents' Association	G-460
W. Bruce Martin Insurance Ltd.	G-466
Pamela Scherman	G-470
Sudbury and District Insurance Brokers' Association	G-472
Robert Renaud	G-477
Mrs Cecile Rainville	G-479
Robert Tyler	G-481
Kimberly Gauthier and Sherry Lynn Gauthier	G-485
Dr J. Howard Tait	G-488
Ted Callaghan	G-490
Adjournment	G-494

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Témoïn :

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No. G-10 1990

Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on General Government

Insurance Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Tuesday 23 January 1990



Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

CONTENTS

Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Tuesday 23 January 1990

The committee met at 1001 in room 151.

INSURANCE STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

The Chair: I am going to recognize a quorum and welcome the Provincial Building and Construction Trades Council of Ontario. Their brief has been circulated and, gentlemen, the next half hour is yours. If you would identify yourselves for the benefit of Hansard, as well as the television audience, we can proceed.

PROVINCIAL BUILDING AND CONSTRUCTION TRADES COUNCIL OF ONTARIO

ELECTRICAL WORKERS CONSTRUCTION COUNCIL OF ONTARIO

ONTARIO PIPE TRADES COUNCIL

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793

LABOURERS' PROVINCIAL DISTRICT COUNCIL OF ONTARIO

Mr Gold: Thank you. My name is Murray Gold. I am counsel for this group, which comprises the Provincial Building and Construction Trades Council of Ontario and the Electrical Workers Construction Council of Ontario, the Ontario Pipe Trades Council, the International Union of Operating Engineers, Local 793, and the Labourers' Provincial District Council of Ontario.

I am accompanied this morning by Trevor Byrne, president of the Provincial Building and Construction Trades Council and executive secretary-treasurer of the Ontario Pipe Trades Council; Joseph Duffy, business manager and secretary-treasurer of the Provincial Building and Construction Trades Council; and Ron Walsh, vice-president and assistant business manager of the International Union of Operating Engineers, Local 793. I also have with me Michael McFadden of our office.

Together, these trade unions and councils of trade unions represent approximately 100,000 workers in this province. When one takes into

account the dependants and other family members, we are probably dealing with closer to 200,000 to 300,000, perhaps 400,000, people in this province.

Our clients generally support a no-fault auto insurance system. We are probably one of the few groups appearing before you that supports a no-fault system in principle, yet we are here today to strongly oppose the particular proposal that the government has put on the table. In our view, this is not a no-fault scheme; this is simply an inadequate no-insurance type scheme.

What we support would be a no-fault system that fully and fairly compensates everyone who suffers an automobile accident and fully compensates them for whatever injuries they may incur, be it serious physical injuries, be it pain and suffering, be it loss of income. We would support a no-fault system that results in savings through the elimination of litigation expenses, through the reduction of administrative costs and through the elimination of insurance company profits. We support those principles.

This bill does not achieve that kind of no-fault system. It cuts costs by reducing basic benefits. It reduces costs on the backs of those people who will be least able to bear the cost reduction and, in our view, that is unfair—unfair not only to our members, unfair to every Ontarian.

In our view, this plan has been drafted more to protect the interests of the insurance companies than to protect ordinary Ontarians who face the danger of automobile accidents. Let's get to some basics.

Under Bill 68, most people are denied the right to sue. That, per se, is not of grave concern to us. What is of grave concern to us is that, as a result of being denied the right to sue, the vast majority—perhaps 90 to 95 per cent—of automobile accident victims will not be entitled to full compensation. It is only those people who suffer a permanent injury where that injury causes serious disfigurement or permanent impairment of important bodily function who will be entitled to full compensation, and then only if they are innocent. If they are the wrongdoer, they are not so entitled.

The rest, the vast majority of innocent automobile victims, are left with the no-fault schedule in the act. The schedule is inadequate in

many respects. Let me particularize them. On page 3 of the brief we discuss the basic failure of the system to compensate for pain and suffering. I am sure you have heard that from many people. I do not want to belabour the point, but it is a serious one.

It seems to us that anyone who suffers injury, who suffers pain, who endures suffering, is entitled to be compensated. The only reason for not compensating them is to save the insurance companies some money. In our view, that is not fair. If someone suffers a damage, they should be compensated.

On page 4 we discuss the inadequate income thresholds that are compensated. As you know, the maximum amount of income replacement provided under this bill is \$450 a week. In fact, that formula is 80 per cent of the gross weekly income to a maximum of \$450 a week. If the intent of this bill is to protect ordinary Ontario consumers, then it fails miserably to achieve that objective.

The \$450 a week is simply too little. It will leave many people unprotected. It will leave many families without. We understand \$450 to be much lower than full compensation would be in most circumstances and, indeed, significantly lower than any other no-fault schedule in North America, including that in Quebec.

A second difficulty with the \$450 limit is that it does not recognize the full scope of a worker's income, particularly in the construction industry. In the construction industry, up to 20 to 25 per cent of an employee's compensation will be in the form of fringe benefits, and this we discuss on page 7 of the brief. Those fringe benefits include vacation pay, pension contributions and contributions to a health and welfare plan. Trade unions have negotiated these benefits over the years and built up sophisticated systems to protect their members in retirement, in sickness, etc.

When the bill talks about 80 per cent of gross weekly income, it is not talking about the value of these contributions; it is just talking about 80 per cent of the cash wage. That is inadequate because so much of our members' wage package is in the fringe benefits that are not recognized in Bill 68's compensation formula.

1010

The no-fault schedule is inadequate, as well, because it simply fails to protect the injured accident victim during the first week of income loss. Again, why? The mortgage payments do not stop. The food bills do not stop. The kids' expenses do not stop. Why does the innocent

accident victim bear the loss of the first week after the accident?

We are also concerned about the specific effects that Bill 68 will have on workers in the construction industry, and here I would like to take a couple of seconds to explain the kinds of benefit structures that have emerged in the construction industry through collective bargaining over many years.

In the construction industry we have what are called multi-employer benefit plans. As workers move from job to job with different construction employers, each employer contributes a certain amount to the plan and the worker accumulates a coverage. The plans are bargained for at the bargaining table and workers take money out of their pockets and put it into these funds. It is just another form of wages. If they become ill, if they become injured, they draw on the fund, but it is their money that is coming back to them. It is their collected savings that are redistributed to the accident victim.

But what does Bill 68 do to that? Bill 68 requires that those moneys, those benefits from those funds, that return of workers' money, be deducted from the no-fault benefits. So if the worker is involved in an auto accident he does not get the no-fault benefit, not until he exhausts his entitlement under his own plan. The worker pays for his own accident, for his own injury, regardless of the fact that he may not be at fault at all for it.

What happens if the worker comes back to work after the injury and he has exhausted his entitlement under his benefit plan and he gets sick? What happens if he has a heart attack? What happens if he suffers some kind of other injury that does not enable him to work? At that point, of course, he has exhausted his benefits under the plan he has paid for, because this no-fault plan requires him to do that, and he is left without any protection at all.

We view that as one of the most serious flaws in this bill. It simply does not recognize that workers save through these plans and that when these plans pay out they simply return workers' money. Bill 68 takes that money, takes the benefit away from the worker and gives it to the insurance company, and that is not fair.

We point out that the courts have often considered the nature of what they call these collateral benefits, and on pages 9 and 10 of the brief we have quoted from the judgement of Mr Justice Dubin on the Ontario Court of Appeal, who briefly writes, "...with respect to collateral benefits obtained pursuant to collective bargain-

ing agreements or private contracts of employment, I would view such benefits as part of the wage package and the benefits received as having been paid for by the employee."

That is very much the reality of the situation. The reality is that the employee pays into the fund and gets his own money back when he is injured. That money should not be deducted from the no-fault benefits.

We are also very concerned that Bill 68 will result in higher Workers' Compensation Board assessments. The reason we have that fear is that the possibility of a lawsuit as a result of an automobile accident has been severely limited. As a result, many fewer people will opt out of the workers' compensation system in favour of a lawsuit to recover their full damages and, as a consequence of that, the workers' compensation system will be subject to many more claims resulting from automobile accidents. Inevitably, this will result in increased premiums and inevitably that will come back to the bargaining table. Employers will try and pass that tax back to employees. Employees will resist. We already have enough issues on the bargaining table as a result of recent provincial legislation. This will add a further one to a round of bargaining that promises to be intense, to say the least.

This will have a decisive effect on collective bargaining in the construction industry this spring and we would caution against putting too many burdens, as this bill will do, on labour relations in the construction industry.

One final point. I am sure you have heard it from others. I will not belabour it, but it is a serious point, and that concerns the procedural provisions, one procedural provision in particular, in the bill. Pages 5 and 6 of the brief refer to subsection 231a(3). That section allows the insurer before trial to bring a motion to throw the case out of court on the grounds that it does not disclose a permanent injury that causes serious disfigurement or permanent impairment of a serious bodily function. Ordinarily, if a party were to do that before a hearing and lose, they would be stuck. That would be the final determination. That is why one would bring that motion—to get that matter finally determined.

In Bill 68 the insurer, the stronger party, gets two kicks at the can. In the event that they lose on that motion, they can go through an entire trial and raise that very same issue again at the end. But that violates at least two basic principles of fairness. One is that you get one kick at the can and you get to put your opponent through one set of costs to make your point. Under this bill, the

insurer can force the plaintiff on a motion to bring all of that extra evidence to determine whether the threshold is met or not met. That is expensive and time-consuming. If the insurer wins, then the accident victim is out of court.

But if the insurer loses, then the insurer can go to trial and raise the same issue again. This procedure has no advantage at all to the innocent accident victim. None. It cannot possibly enhance their rights, because if they win, the insurance company simply raises the issue a second time. On the other hand, it affords an unprecedented advantage to an insurance company. In no other legal proceeding that I am familiar with is it possible to raise your same issue twice, the second time after you have lost the first time. The net effect of this procedure would be to encumber the process with additional motions, additional costs, and additional delays. It is an unprecedented procedural provision, and I would suggest that it is not warranted.

I would like to leave the remaining time for questions.

Mr Kormos: What is remarkable is that the government has not even costed the impact of this legislation on workers' compensation, on the Ontario health insurance plan and on legal aid, because indeed, victims are going to be in a far more precarious position in terms of how lawyers will have to respond to them when the victim walks into their office, because a lawyer will not be able to give advice with certainty as to whether or not they will pass the threshold.

1020

The government has not even costed the impact of this legislation on those areas. Estimates for workers' compensation range anywhere from \$25 million to in excess of \$50 million annually, or at least in the first year alone.

You represent 100,000 workers here in the province of Ontario, all of whom will definitely be hurt badly by this legislation. The government is using no-fault to label this package. How do you perceive that in terms of adding to the confusion of people out there? People tend to perceive no-fault as pretty good, as a pretty positive thing. In fact, this is the farthest thing in the world from no-fault; it is full of fault. That seems to me to just be a packaging device. Do you see that happening? That people are confused about what this really is and what this is really going to do to them, in part because the government has improperly chosen to call it no-fault?

Mr Gold: Absolutely. I think that you are right to say that a no-fault plan has some attractions in principle, as I have indicated. We would support a no-fault position that was truly a no-fault position, that reduced the administrative expenses, that cut out insurance company profitability, that cut out the needless costs of litigation and compensated people on the basis of need rather than on the basis of some theory of fault.

That is not what this does. This just implements a very low level benefit and denies the accident victim the right to full compensation. We think that \$450 is pathetic today, but let's look two, three, four years down the line. There is no indexation in this bill. The last limit, \$140, was brought in some 12 years ago and has not been indexed. This pathetic limit of \$450 in two, three, four, five years is going to look even more pitiful than it looks today. This is not a no-fault system; this is simply an elimination of all insurance at all. It is simply an elimination of the right to compensation for your injury.

Mr Kormos: The insurance industry in this province, as it is in most places, is incredibly powerful and indeed incredibly wealthy. It looks like what the insurance industry has done is reversed everything. Everything has been switched around, because what this bill does—it is the insurance industry that insists on this bill being passed—is switch everything around. The public is now insuring the insurance company rather than the insurance company insuring the public. Do you perceive it in that same manner?

Mr Gold: I perceive that that is exactly what has happened, that the bill is eliminating the substantial risks for the insurance company. It is capping their risks. Yet that is what we are paying them for ostensibly, for their risks. So, on the one hand, the bill eliminates the insurance company's risks, and on the other hand, it places all the risk on the accident victim, because this is inadequate.

Accident victims will be thrown back on their own resources. This does not protect accident victims for the range of injuries that people will suffer in auto accidents. So, yes, the auto insurance companies are well protected. Their risks are limited, but the ordinary person is not so, is very exposed.

The Chair: Thank you. I have Mr Sola, Ms Oddie Munro, Mr Nixon, for up to four minutes.

Mr Sola: You have mentioned the phrase "the right to full compensation" several times. Would you give me a definition of what, in your mind, is full compensation?

Mr Gold: Full compensation refers to compensation for all the injury that person has suffered. If that be loss of income, so be it. If it be pain and suffering, so be it. I think that the phrase takes full definition in every case, but I do not limit it at all. If a person has suffered a loss as a result of an automobile injury, then that should be compensated. Why should the loss fall on that person?

Mr Sola: Okay. In the present tort system, how would you define full compensation? You have one case, identical circumstances, identical earning power, identical guilt or innocence in the two-car accident. One person, in case (a), has a top-notch lawyer and top-notch witnesses and he gets a six-figure settlement. In the same circumstance, in case (b), the lawyer is not as competent, the witnesses are not as believable, and that person gets a four-figure or five-figure settlement. Is that full compensation?

Their earning power before the accident was identical. They were Ford workers on the line, working side by side. They got two different lawyers, and the one fellow got \$100,000, \$200,000, the other one got \$10,000 to \$20,000. Now which one is getting full compensation?

Mr Gold: Of course, we agree that the situation you have presented is unfair and we support a no-fault system that would eliminate compensation based on that kind of contingency: contingency of litigation. We do not support that.

To a certain extent circumstances are going to vary. Some people are going to be horribly unlucky and some people are going to be a little luckier. That is sort of inevitable in any system, but when we speak of full compensation, we speak of a right to full compensation that is not contingent on those factors, that depends of the nature of the injury, the nature of the loss, and that seeks to eliminate as much as possible the kind of contingencies you are speaking of. This system is not aimed at that at all.

The Chair: Two minutes.

Ms Oddie Munro: I think that many of the arguments that you have presented are certainly worthy of consideration. Everything that people bring before the committee certainly is. I should clarify that.

Could you tell me what your proposed amendment would be in terms of lost income and the calculation of the gross weekly based on your cyclical argument?

Second, it certainly appears that teachers and the police force have fought under bargaining rights for purchase sick leave plans and, in addition, for banking of vacation, etc. I am just

wondering, although I have read through it very quickly, what your amendment would be, because it would have to be some sort of a suggestion or a recommendation if you felt you were a special case.

Although we can appreciate your argument, it seems that various other clients that are in similar situations, the construction workers, have also raised the issue. But I think the committee would be helped if you could look at the recommendation. You have made the argument. I am just wondering what the tradeoff would be, whether you want to be excluded on the basis of one part of the bill as it stands and a special case made.

Mr Gold: I will address your point very specifically. I think your question is directed to section 11 of the draft regulations and the limitations imposed on compensation. In our view, the number, \$450, is too low. That is point one.

Point two, you will note that in clause 11(4)(b) there is specified to be an offset from that \$450, and that offset is equal to the amount of benefits that arise as a result of these plans. We would suggest that those offsets at a minimum be eliminated. There is no call for them. The offsets are simply a return of workers' money. It is simply the insurance that they have already paid for. If they are paying as well for no-fault benefits then why should the benefits that they have paid for through their employment be deducted?

I also point out that the only offsets are for employment-related income replacement plans, not private income replacement plans that you will have to buy from your insurance company. So the effect of this will be that the sophisticated plans of developed and collective bargaining in the construction industry and other industries will be rendered useless for the accident victim because the full benefit of them will enure to the insurers. The only protection that someone can get will be not through their collective bargain plan, but through a private insurer. The private insurers get you coming and going. They limit your basic benefits and they compel you, if you want to supplement them, to purchase only from them.

Ms Oddie Munro: But you are arguing that this is not at all in the area of being double recovery and that, in fact, if a fair case was made for a situation of various groups that other things would not apply either so that the double recovery rule would not apply. I think that is certainly one of the problems that Justice Osborne identified, the possibility of drawing

and receiving double amounts. You are saying the accumulation of sick leave or the way in which you are rating your annual income is quite different than any of the examples you have heard or seen reflected in the bill. I guess my concern is that unless I see and you have already told me what some of the amendments might be, then we cannot really respond.

The \$450 was seen as sort of a way in which those people who made less than \$30,000 a year would not have to pay unduly in terms of premiums for those people who made more than \$30,000. The \$450 is without tax, I think. It is just that kind of information that I would like and since you have obviously spent a good deal of time on it, I want to know what your amendment would be.

1030

Mr Gold: As I say, our amendment would be to eliminate subclauses 11(4)(b)(i) and (ii).

The Chair: Gentlemen, thank you very much for your presentation.

From the United Senior Citizens of Ontario, I have a Mr Mansfield and a Mr Atto. I believe the clerk is distributing copies of their presentation. The committee time for the next hour is yours. If possible, if we could break it out to 15 minutes for presentation, this would allow us then 15 minutes for some dialogue, questions, comments and discussion. Please identify yourselves and proceed.

UNITED SENIOR CITIZENS OF ONTARIO

Mr Atto: My name is John Atto. I am senior vice-president of the Mitchell Group Insurance Brokers Ltd. We are, among other things, insurance consultants to the United Senior Citizens of Ontario. We are going to give two presentations here, one by Mr Mansfield, who is beside me. He is the president of the United Senior Citizens of Ontario.

He will be giving one which basically is their position, and then I will also give a presentation. It gets into more of the problems that I foresee with the implementation in the future rather than some of the technical details. Maybe I could just turn the microphone over to you, Alec, and you could give some background as to who the United Senior Citizens of Ontario are.

Mr Mansfield: First of all, I would like just to thank the committee for allowing us to appear before you today. I am the president of the United Senior Citizens of Ontario, representing 300,000 members. We have been in consultation with John and the Mitchell Group on several occa-

sions and in our earlier presentation to the automobile insurance hearing.

I would like to say that in principle, provided there are no future moves to eliminate seniors' discounts in automobile insurance, the United Senior Citizens of Ontario support automobile no-fault, with the following exceptions:

The threshold: It is our feeling that the requirements to meet the threshold could be very onerous. However, we realize that it would take the courts to determine the exact meaning of the threshold. We would suggest that public forums be held annually to review the fairness of the threshold.

We do believe that serious mental injuries should qualify for the threshold and would therefore suggest the words "which is physical in nature" be deleted from threshold requirements.

Service by insurance companies: While we appreciate the penalties imposed for poor payment practices for no-fault benefits for insurers, we would point out that insurers in Ontario have historically been extremely lax when it comes to prompt payments for no-fault benefits. We would ask that close attention be paid to this area and that where the insurers are not living up to their responsibilities, full penalties are applied.

In conclusion, the United Senior Citizens of Ontario feel that their members should be paying their fair actuarial share for automobile insurance. At the same time, because a large number of our members are on fixed income, it is mandatory that annual increases be kept under control. From information supplied, we are confident that this plan provides the best possible compromise. However, since no one has the any way of knowing until after the implementation, we would ask that, if in fact this does not stabilize automobile insurance rates, other steps be taken. Respectfully submitted.

Mr Atto: I will just go into mine, then we can answer questions.

First, I would like to congratulate the government of Ontario at arriving at what I feel is a viable solution to the insurance crisis we are being faced with today. If we stop here for a second, sometimes people miss that the automobile insurance as it is sitting today is in bad shape. Rates are under control, but everything seems to be busting at the seams and insurers are finding ways to get around rate control.

As a representative of a large number of senior citizens, as well as others in this province, it has for some time been my contention that steps must be taken to keep annual increases within inflation

guidelines and to reduce the amount of arbitrariness by the insurance industry.

It is my strong belief that this method of threshold no-fault has the best possible chance of success in keeping increases to a minimum. It is hoped that the government's overview of the insurance industry will then see that insurers become much more responsive to the problems of individual Ontario residents.

Between 15 and 20 per cent of senior citizens presently enjoy a senior citizens' discount on their automobile insurance. It is my feeling that these individuals will see little, if any, increase in their automobile insurance rates, if this bill is enacted, for the year 1990. I am personally aware of one new company that will be providing seniors' discounts and I am confident that there will be many more.

Under the circumstances, the vast majority of seniors who shop for insurance in the next year will actually be paying less for their insurance in 1990 than 1989, after this bill is enacted.

This committee has obviously heard numerous comments on the effect of the threshold, the unfairness of certain areas and much discussion on technical difficulties. I am confident that others have brought your attention to these difficulties, and rather than once again dwelling on them, I would like to discuss three points in general. These are as follows: claim service in the insurance industry, treatment of individual insureds and future changes to the classification system.

Claim service in the insurance industry: It is difficult in the course of a normal report to find acceptable polite adjectives to describe in general insurers' handling of accident benefits claims. These seem to be handled by junior personnel on an adversarial basis. Service is poor and quite often claimants are made to feel that they are second-class citizens.

I realize that these comments are harsh. However, I do feel that they properly reflect the present method of handling accident benefits claims.

Insurers in general do a good job in handling first-party claims—here I mean collision claims—on both home owners and automobile insurance. I can only assume that through a combination of viewing accident benefits claims as adversarial and the small amounts of weekly indemnity payments that are paid, this area of claims handling has simply fallen through the cracks.

It is mandatory that, under the new regulations, this attitude change immediately. Both the government and insurers must realize that one of

the large advantages of this new legislation is the prompt payment of wage replacement. Any service or other problems in this area will quickly disillusion the Ontario public.

Treatment of individual insureds: Presently, insurers have the feeling that it is impossible to make money on automobile insurance in Ontario. This is the reason they use when confronted with an individual's insurance problem. Obviously, we cannot live with a system that feels that fairness to a corporation outweighs fairness to an individual.

Since it would appear that both the government of Ontario and the insurers of Ontario feel that a reasonable return on equity can be achieved via threshold no-fault, I can only hope that the government of Ontario will use the powers given to it in this legislation to ensure that individuals are treated as fairly as possible.

I think—and we can ask questions—there are horror stories out there that I feel—at least insurers have given me the answer—are a direct result of their feeling they cannot make money. If this is enacted and they now feel they can make money under of this system, at least the vast majority of these horror stories better disappear, because we cannot have them going on time and time again. There was a story in the *Toronto Star* this morning. It is just one of many I am faced with day to day in my business.

Future changes to the classification system: For the past while, I have heard a number of rumours that Bill 68 is the first in a number of steps the government will be taking on automobile insurance.

1040

The next rumoured step is the formation of a universal classification system. I am strongly opposed to such universality for two reasons. First, I believe that the present changes from company to company classifications is one of the major areas of competition in the insurance industry. For instance, one company may feel the best class does not drive to work at all, while another will include driving to work up to five kilometres in its best class. It is such competition as this that enables individuals to shop for insurance to their best advantage.

Second, the present legislation drastically changes the way we presently distribute claims dollars. It will be some time before statistics are available to see the results of these changes. Any quick change in the classification systems will only serve to muddy what is already murky waters.

I would point out that I have no problem with the standardization of classifications for the purposes of statistical evaluation and can see no reason why this cannot co-exist with individual company classification variances.

What I am saying here is that one of the arguments always put up said that everybody should be rated if they drive less than 10 miles to work as this code and everybody should be this way who is this way, so that we can keep statistics. Surely we can keep statistics and at the same time allow people some freedom of variances within the system. It does not seem like a complicated problem to me.

In summary, the people of Ontario need a system of automobile insurance that is fair, responsive and affordable. It should be obvious to anyone who works within the insurance system that the present method of automobile insurance fails on some, if not all of these criteria. Any change calls for compromise. It is once again my feeling that the legislation proposed provides the best possible compromise at this time.

It should be obvious to all those involved that this is a drastic step and that we are to a large extent entering an unknown territory. I can only ask that the government of Ontario constantly review the reality of this legislation to ensure that it meets with everyone's expectations.

Mr Kormos: I have to tell you that I appreciate some of the candour in your report. I thought I was the only person who found it difficult to find acceptably polite adjectives to describe the insurers handling of accident benefit claims.

I am concerned about the comments that were made by Don McKay, the general manager of the Facility Association, in his third quarterly report in 1989, after this bill had been read for the first time. Those concerns of McKay from Facility Association were echoed by Mr Justice Osborne. What they had to say was this: if this legislation is passed, certain classes or groups of people, and sadly among them senior citizens, will find themselves denied regular insurance coverage and therefore forced into Facility Association where, as you know, the rates are \$2,000, \$3,000 and 4,000—the rates are just sky high.

Both McKay from Facility Association and Mr Justice Osborne say that, and the reason why that is going to happen is that seniors tend not to have those employer-provided disability benefits that would in effect subsidize or offset the insurer's obligation to the injured person. So seniors, unemployed people, seasonal workers and small

business people, are going to be among those classes of persons who are referred over to Facility, because there is nothing about this legislation that ensures availability of insurance; that is to say, ensures that any given client has a right to get insurance from a regular insurer, because of course they can be arbitrarily denied and then they are stuck with Facility.

Do you have any comment on the opinions of Don McKay from Facility Association and Mr Justice Osborne about that impact or effect of this legislation on seniors?

Mr Atto: Let me make it twofold. First, I am satisfied, although I am not an actuary—I have been advised by insurance companies' actuaries; I have to say I am an insurance broker but I do not represent the insurance industry, or at least insurance companies—that seniors will become a more actuarially attractive class under this legislation, ie, they expect the results of this legislation to be better for the insurance industry than under the present system. I do not have any objections. One of the major companies I deal with in senior citizens' discounts is Canadian Home. Canadian Home has told me it does not anticipate any increase under this system, that it feels the results it is now getting will be improved for seniors. In fact I am satisfied—and in talking to some other companies—that the actual rating for senior citizens under no-fault will be better than it is presently.

In regard to the answer to your second question, I can once again reiterate what I have said. There are many too many people thrown into the Facility now. There are people who cannot find insurance through absolutely no fault of their own who are by any valid underwriter's point of view acceptable risks. What I am saying here is that I feel, and certainly the industry feels, that the reason they are being so difficult now is that they are losing money. If they are given a system where they are not losing money and they still do not respond, I do not know what else we do except—

Mr Kormos: Obviously you do not agree with Don McKay and Mr Justice Osborne. You raised the matter of losing money. The auto insurance industry says that in 1987 it lost \$142 million. John Kruger from the Ontario Automobile Insurance Board, relying on Irene Bass, the actuary from Mercer, says: "No, the auto insurance industry did not lose money in 1987. Indeed, they made money." Who is lying, the auto insurance industry or John Kruger?

Mr Atto: I do not know if it is a question of lying, I guess it is a question of interpretation.

But the automobile rate review board, by its actuaries, certainly was recommending rate increases to the senior citizens of Ontario, because I sat before that board, that were going to be 35 or 40 per cent. I can only assume that if the automobile rate review board was doing its job, not the insurance industry's job, and was saying that a 35 or 40 per cent rate increase was necessary, there was a problem, because how else could you recommend a 35 or 40 per cent increase if you do not have a problem?

Mr Runciman: Mr Mansfield, I would like to ask you about the process, as to how your organization came to its conclusion that you have summarized in your submission here today. Was there a poll done of your membership or just what was the process leading up to this submission?

Mr Mansfield: There was a poll previously done, but on this submission, no, we did not have that chance.

Mr Runciman: When previously?

Mr Mansfield: This was when we appeared before the insurance board back in March, when we appeared back earlier than that, when we wrote to Mr Peterson about it, and the correspondence, letters and so forth that we had protesting the high cost of insurance.

Mr Runciman: So actually the poll, if you will, was taken before this bill was introduced.

Mr Mansfield: Right.

Mr Runciman: When the bill was introduced, and I gather you have an executive of the organization, was it the executive who looked at this bill and decided they did like it?

Mr Mansfield: We had representatives in from insurance companies, from lawyers and our representative who is with me today. They all submitted their feelings to the executive board back on 11 December. From the study that we took after that and how they felt, it was the feeling of the board that what we have here today is—that was their feeling, that we would recommend no-fault.

Mr Runciman: Who represented lawyers in that process?

Mr Mansfield: A Mr Jeffries came to our—

Mr Runciman: Mr Jeffries?

Mr Mansfield: Yes.

Mr Runciman: What was his qualification to be representing lawyers?

Mr Mansfield: He is a lawyer from a lawyers' firm, speaking mostly from the Committee for Fair Action in Insurance Reform.

Mr Runciman: He represented the FAIR group?

Mr Mansfield: He mentioned that in his presentation to us.

Mr Runciman: Mr Jeffries from FAIR.

Mr Mansfield: He spoke about FAIR. I would have to—there are three lawyers in the firm. He was the representative who—

Mr Runciman: How long did these hearings last, when you considered this?

Mr Mansfield: I think his presentation to us was about an hour.

Mr Runciman: How long did the total hearings last, when you consider that you also heard from the insurance industries?

1050

Mr Mansfield: Mr Jeffries was there for about an hour. Mr Atto made a submission and we had some of his questions and answers; that sort of thing. That was submitted to the board so that it could get a better understanding of it. I do not think I have enough copies to give all the members if they are interested, but if you are interested I could give you one.

Mr Runciman: I am interested in your representing a very significant organization. I would like to know what kind of process was involved in coming to this conclusion and if indeed your organization heard all the facts. You have taken a position which I must say is contrary to virtually every other witness who has appeared before us in these hearings who has not represented what is perceived to be a vested interest, either the lawyers or the insurance industry.

You appear here today with someone who works in the insurance industry suggesting that your hearing process was modest, to say the least, that you did not consult your membership at large, but you are here taking a position in front of this committee supposedly representing seniors across this province. I just want to say, sir, with great respect, that I have difficulty. I do not think that you or your members really completely understand the implications of this legislation. I would suggest, again with great respect, that perhaps you sit down with representatives of FAIR.

We had a gentleman, a young fellow 18 years of age here last week, Jeremy Rempel, in a wheelchair, who suffered brain damage, talking about the implications of this legislation—people who have suffered serious injury, people who have suffered modest injury as teenagers who under this legislation will get no benefit at all. I

think you should be looking at all those kinds of witnesses, talking about the testimony that they have given to this committee before you reach this kind of significant conclusion. I think it has impaired your testimony here as well to appear with someone who works and is gainfully employed in the insurance industry.

Mr Mansfield: May I reply to my honourable friend?

The Chair: Sure.

Mr Mansfield: When we were appointed or elected as representatives of the United Senior Citizens of Ontario—it is their wish that we conduct business on their behalf. As I have said to the honourable member, we had people in—we just did not take this on our own—and sought their advice. After seeking their advice, their suggestions, the board studied it and in conjunction with my friend here we felt this no-fault was good enough for our seniors. I am sorry if he thinks otherwise.

Mr Runciman: In consultation with your friend; that is a good point.

Mr J. B. Nixon: Mr Mansfield, I would like to thank you very much for appearing before us. The United Senior Citizens is a well-respected group and spokesman for senior citizens in this province. I do not think it is right when an elected member of the Legislature tends to belittle your organization or the work you do on a voluntary basis, so I again say to you I appreciate your coming before us.

I have one question, and that has to do with your perception of the tolerance among seniors for rate increases. More specifically, obviously no one wants to pay more for an insurance policy whether it is in the old form or the new form. What sort of tolerance do you think people have to increases? Some people say five per cent is okay, or some people say 15 per cent is okay but no more. What sort of level of tolerance exists?

Mr Mansfield: For our senior citizens they do not quote that type of percentage increases. They object very strenuously to the high increases that were proposed. They are accepting the proposed rates at the present time.

What we are finding is the loophole by which insurance companies seem to have been able to get around the set figure by telling our senior citizens—we have had numerous phone calls and numerous letters—"We no longer will carry you but we will refer you, out of the goodness of our hearts"—for use of a better word probably—"to another firm," in which the same firm has the same address, the same phone number, the same

president but a different firm name. Then they are being charged—we have had calls—with 30 and 35 per cent.

That they are objecting to very strenuously. They cannot understand why this is going on and wonder why the government could not close the loophole. That type of thing we are getting at the present time. Just two weeks ago we had a lady and hers had increased by 30 per cent. We were at London last Wednesday and we had a senior there say the same thing to us. This is what we are getting from our seniors.

Mr J. B. Nixon: Right. It is a similar response that you got when the auto insurance board made its decision. I take it, which would have supported increases for seniors in the area of 30 per cent or 40 per cent. I cannot remember the exact figures but I take it you got that same response then.

Mr Mansfield: Very much so. We had petitions against it which we submitted to ministers—the Minister without Portfolio responsible for senior citizens' affairs (Mr Morin), Mr Elston and so forth—a great number of petitions protesting the terrible increases in insurance for our senior citizens, some of them as high as 40 per cent, where the insurance companies were going to do away with their discounts. Some of them had as high as 20 per cent.

Mr Runciman: Point of clarification, Mr Chairman—

Mr J. B. Nixon: I was just going to follow that up, Mr Runciman, if you would allow me the opportunity. I would like to ask you a question about the submissions you made to the Ontario Automobile Insurance Board and what areas you focused on.

Mr Mansfield: What areas we focused on?

Mr J. B. Nixon: Yes.

Mr Mansfield: I do not have one here now, but we focused on the high cost of insurance, how it would affect our volunteers. We had people from the different—like the cancer society, veterans affairs and so on asking us what we could do because they were getting reports back from their volunteers that if the insurance rates went up the 30 per cent or 40 per cent that they were talking about, and the mileage was tied in with that, they would lose these people, that they just could not afford it. They would stop volunteering. Meals on Wheels was one.

We had people from all over the province call and say: "What can we do? How can we help to protest this because we are getting calls from our volunteers that they are going to stop if insurance

rates go up as mentioned?" On this basis of quite a number, we submitted our brief.

The Chair: Ms Parrish, on a point of either clarification or information with respect to the situation cited where one insurance company refers you to another insurance company with the same telephone number, address, etc.

Ms Parrish: Bill 68 does provide that under the new system. Rates of affiliated companies will have to be filed together in order that the insurance commissioner can ensure there is no improper differentiation between rates in the affiliated company. There are occasions when it is appropriate to have different rates. For example, there are companies that are affiliated to companies that have abstainer companies; that is, only abstainers can be in the company and that might be a situation where it would be reasonable to have differential rates. But the bill will allow the regulatory authorities to scrutinize affiliated companies to make sure they are not playing a sort of shell game with rates.

The Chair: Okay, gentlemen, thank you very much for your presentation today. Do we have anyone representing the Downtown Clinic? Ms Gilbert is not here yet.

The Epilepsy Association of Metropolitan Toronto called in and cancelled. I do not have a delegation so I am going to adjourn the committee for the next half-hour and reconvene at 11:30. Thank you very much.

The committee recessed at 1100.

1130

The Chair: I am going to recognize a quorum and reconvene the committee. Welcome to the committee, Gloria Gilbert. The next half hour of committee time is yours. The clerk, I think, has distributed the brief. It was in the brown envelope; it looks like this. If you have not opened the brown envelope, it is inside. It is marked exhibit 103. Please proceed.

THE DOWNTOWN CLINIC

Mrs Gilbert: Thank you for the opportunity of visiting you in Toronto. I appreciate it.

Just as a little bit of background, I actually did make a submission to Mr Justice Osborne a few years ago from my clinic when we were becoming very concerned about some of the difficulties with medical care, insurance premiums, the legal issues, etc., and I would suggest to you that over the last few years, having participated in that forum on an ongoing basis, I feel a little bit more comfortable about understanding some of the difficulties with the system

and trying to suggest alternative ways of meeting the needs of people who are injured in car accidents.

I can only speak for those people whom I primarily treat. I am a physiotherapist in private practice. For the most part I am treating patients who have sustained soft tissue injuries as a result of car accidents. I do not work in a hospital-based system any more. That was my own particular bias of realizing that for many persons, especially those suffering the long-term effects of car accidents, the acute health care system really could not adequately service their needs. That was a major reason for my going into private practice.

So I am not dealing with the catastrophic injuries. I am dealing with those people who perhaps, you know, will be able to meet the threshold for suits. I am more concerned with their ability of understanding how they can access the proper care that they need and whether or not they can prove that they meet that threshold for suits. So I have many, many different concerns.

Specifically, I am very concerned about why the word "physiotherapy" is not in the legislation. I would suggest to you that physiotherapists, for the most part, are the front-line people who are dealing with patients involved in car accidents. Although the preliminary legislation uses medical chiropractic nursing and then sort of holus-bolus rehabilitation, without defining exactly what that means, I would suggest to you that physiotherapy is an essential service when it comes to these persons. I would hope that the government would consider reworking that paragraph, because that is exactly what we are doing. We are dealing with the patients with the physical disabilities, whether they are permanent or not.

The other major concern I have, having been in the health care system or working in the health care system for over 20 years, is that working in provincially funded hospitals is not always the best type of access to good care. We all know that for the most part physiotherapy or rehabilitation is not essential service, it is not primary care. When you are working in a hospital and when there is a lack of rehabilitation personnel of any type, the first service to go is the outpatient department because you have to handle your critical care, your acute care cases. That is one major reason why waiting lists for outpatient physiotherapy are so long.

We know we have a lack of qualified physiotherapists in the province, and that is being

addressed by the Ministry of Education and our association, but the other major difficulty is that for the most part you are waiting four to six months, sometimes less, to access provincially funded physiotherapy care. I would suggest to you that if we add a whole new criteria for patients now, we are only going to be taxing that system even more.

Health care is an issue that we realize—I mean, we are all addressing it from many different angles, but health care for the most part has already been undermined because of the needs of meeting certain standards, and the high costs of labour, etc, and the one thing that we are missing out on is the ability to provide adequate service. I do not see how that is going to change under the new legislation just because we will tend to fall back to the OHIP system for many, many costs.

I would suggest to you that as a private practitioner who is outside OHIP, I am not concerned that my business is going to go down. I know that my business, if anything, is going to go up. I am talking because, you know, I have developed the reputation in London, in any event, where special care is provided in the type of clinic that we run, meaning we see the difficult people. We see the people who are walking around with headaches and backaches and everything else for several years whom other facilities cannot handle.

So when the patients get to the facility, there is no concern about that. I am concerned that are we allowing too long a break between having patients who should be treated in the acute care system become chronic patients, where their recovery and the rehabilitation is much more protracted out and much more difficult to do. Throwing it back to the health care system, or even suggesting that after 10 years there is some mythical feeling that everybody is better at 10 years does not mean that it is going to be less costly for the provincial health care system. It is not going to be.

I know I am sort of jumping all over. I hope that you can read the brief. I would rather expand on points in the brief. I am concerned because many of the patients who I see are those who have chronic problems, and very often when you ask them, "Have you ever been involved in a car accident?" commonly the answer is, "Yes, but it was 10, 15, 20 years ago." My next question over the years has always been, "Have you ever recovered completely from those injuries?" Most often, again, the problem is: "Well, not exactly completely. I have accepted a certain level of discomfort. I cannot play tennis any more. I

cannot do this, I cannot do that." When we look at where the throwbacks are going to be to the health care system, we may not be seeing them immediately, but we are definitely going to see more of them in the years to come. That, again, is going to tax the health care system even more.

Primarily, of course, the patients whom I deal with are not the catastrophic injuries. They are the patients who have soft tissue injuries. I would suggest to you that many of my patients' cases are long settled. In fact, many of them do not come to see us until it has already been a few years. Then now that the four-year mark sort of marks the end of rehabilitation that is not covered under OHIP, very often they continue on even longer.

I cannot speak for any one. I realize the difficulty that we all have is that no matter what system we are dealing with, there are always people who abuse the system, who mess it up for the real patients. I would suggest to you, however, that soft tissue injuries are a real problem. They are a significant problem. They affect people's ability to work and to provide for a good quality of life, and those are the patients whom I am so concerned about.

I am not concerned that any of my patients would not meet the threshold for suits with a permanent and serious physical disability. I am concerned about how to go about proving that, because it becomes a difficult and arduous task. At this point it looks like we are throwing back more onus on behalf of the general practitioner to be able to understand what good rehabilitation is all about, how to access the system if one type of treatment does not work. Do we try another one? When do we bring in a lawyer if we need a lawyer? Are we going to suggest that the insurance agent is really acting on the best behalf of the client?

Those are questions that come up almost in a round circle, because I know what my patients have gone through to finally get the right type of, not just care, primary care, but to put in place the appropriate rehabilitation measures that are needed in order to get them back into a good lifestyle, meaning not just the physiotherapy or occupational therapy or work assessments but the retraining programs and going back to school and all the other stuff that really may take a long time. I would suggest to you that the system does not work that well now. I am just more concerned that it is going to be even more difficult to try to figure out how we best serve these patients in the next few years.

1140

The other issue I have is sort of as an independent person. I am concerned about, although I am a salaried person in my clinic and if I am involved in a car accident and I cannot work, I will recover up to a maximum of \$450 a week, what is going to happen to my business if I am not able to be that front-line person who is talking to doctors and insurance companies and patients, etc., and essentially soliciting business or maintaining a high profile of my business.

Under the new legislation there really is no compensation for me as an independent person. I may buy private insurance, but then I am suggesting there is sort of a myth that the insurance premiums are not going up. It just means that instead of paying it in one avenue, you are paying it in another avenue. If my business is dependent on me as the sole practitioner being out there and actively involved in the running of a clinic, I am concerned that if I am not able to do that, my business will fail.

Many of my patients are in similar circumstances. I did allude to the types of people I see who are independent persons. They are one-person offices. What is going to happen to them if they are involved in a car accident and cannot work? Never mind the two-year mark and needing the ability to sue, but even if it takes months, or longer than that, for them to be able to get back to being able to work full-time.

Another thing that just came up as I was leaving London—and I will sort of leave it at that and then open the floor to discussion, because as you can see, I am a fairly informal person and I feel that a lot of what I want to say is already on paper and I would hope I can just expand upon that.

I was dealing with a young woman who was terribly overwrought. She was getting a lot of pressure from her second lawyer to settle because her insurance company said she looked all right and she was fine. This is a 25-year-old young woman who is a master's student and hopefully going on to do a PhD. She has been terribly debilitated by this type of injury from day one. She did not get any money from the insurance company for the first nine months, until she engaged another lawyer and at least things got going. The difficulty again is that unless you know how to carefully examine or scrutinize the answers that this woman is giving me, she does look perfectly okay, except that here was a young woman who used to handle two or three jobs, who played tennis, who taught aerobics, who did

all sorts of things, and at this point is just getting through the day as best she can.

Yvonne was talking to me about the difficulty of getting insurance coverage. I asked her to give me a copy of the letter, and I have that for you. I could leave it if it makes any difference. She has been denied insurance from her own insurance company and the only reason it cites is, "The risk as a whole does not meet our normal acceptance requirements." That is the only reason she was given. Now, this young woman did not cause the accident, she was rear-ended, and her life has been put upside down since that time.

So I am very concerned that we are losing. I do not know who the ombudsman for the patients should be. I guess ideally it should be the physician who should know what is best for his particular patient, but I am not convinced that that always works, because physicians cannot always be that well versed in what is appropriate rehabilitation, how long it is going to take, etc, and we are going to need other persons involved who will act in the best interests of the patients or the clients without feeling they have to answer to a legal or insurance system.

I have many concerns, as you can see, and I would be more than pleased to answer anything I can.

Mr Philip: The point you make in item 6 is an interesting point because there are a number of small business people in my riding who have expressed their concern about that under the bill. Under this bill you literally could lose your profit and your business with the very low compensation that would be provided. If you are not able to supervise that business, you might well lose your business as a result of this legislation and have no recourse.

Do you think it is somewhat ironic that if you happen to have a patient fall on you and you strain, say, your arm or your back severely, you would be paid at a much higher rate under workers' compensation than you would be if driving to your clinic you happened to be involved in an automobile accident and had an injury of equal severity?

Mrs Gilbert: You do not want me to open the ball of wax about the Workers' Compensation Board, because there are major problems with that system as well.

Mr Philip: But you would be paid a lot more.

Mrs Gilbert: Except that physiotherapy clinics, believe it or not, are exempt from having to have WCB coverage. It is one of the few exemptions to the rule. For the most part, most of us sort of take care of each other to make sure that

nobody ends up with any type of long-term problem.

Again, you are quite right, there are a lot of inequities in the system. I am not also suggesting that I personally do not have any choices. I could go out and teach physiotherapy if I could not do it physically. That is what has happened to one other of my senior therapists who was severely involved in a car accident. She was an employee of mine, but after six weeks it became quite obvious that she could not work physically at physiotherapy, and she opted for teaching. But if I own a business, that puts a different type of responsibility on me.

Mr Philip: I think the point I was making, though, was simply a dollars and cents one, that for an injury of equal value, as I understand it, of equal severity, you would be paid higher if it happened to be compensable under workers' compensation than if you happened to get hurt on your way to work.

Mrs Gilbert: Except that physiotherapy is not.

Mr Philip: I am sure you have been involved in a number of litigations concerning insurance companies on behalf of your patients. Do I take it from what you have said under item 4 that you consider there will be more litigation, that you will be called more frequently as an expert witness, because of the difficulty in proving the hidden disabilities, if you want, or the severity of the injury in order to have compensation under this act?

Mrs Gilbert: I am wondering how we are going to figure that one out. If a patient does not know whether or not he does meet the threshold for suits, what are the criteria we are giving him? Does it mean that you cannot sort of sustain your normal work or you cannot participate in your work and your leisure-time activities on a regular basis? Or if you can, does everything else go around you?

Many of the concerns are, whom do you access? Do you have to see someone like me and pay me privately to say yes or no, you probably will get better, or do you have to hire a lawyer who is going to have to then solicit independent medical examinations that may be costly? Maybe the independent medical exams are going to suggest that the patient probably will be better within the two-year criteria. So who is going to pay for those? Right now, the difficulty is in assessing those disabilities. It is very difficult.

I would suggest to you that it is certainly not going to make less business for lawyers or independent people, at least over the short term.

until we flush out exactly, what is that threshold, what does that really mean? I am always there sort of as an after. Because I do not have an MD after my name, it is difficult. You cannot feel that you are the expert. I can honestly say that as far as these types of injuries are concerned, I do feel that I am an expert practitioner because that is what I do all the time. But if I compare myself to a medical physician, who has more experience or a wider fund of knowledge etc, it is difficult sometimes for the rehabilitation people to assert themselves and to suggest that this is a real disability because, on the outside, the patient looks all right and none of the tests shows anything conclusive. You have investigated them from the CAT scans to everything else and nothing is conclusive, and yet the patient goes on to continue to have serious problems.

1150

Again, the difficulty I have, Mr Philip, is that I can only speak for my client population, and I can pretty much guarantee anyone that this is a legitimate, nonmalingering group. I cannot speak for all the other people out there, but I know that with this particular group it is so difficult to prove that they have these injuries and then to get the appropriate care and treatment. Yes, it is out there, but it is difficult to access it now and I am concerned that it is going to be more difficult if we lose the ombudsman for the patient. If we could guarantee that it could be the physician, that he or she had the time to do that, that is one thing. We are throwing a lot more responsibility back to the insurance company right now to make sure that its client gets treatment. I do not know if they really care that much. That is from my own personal experience with them to this date. The concern is the health practitioner.

Again, one of the remarks I made earlier is what happens 10 years from now. Even if they do get some type of care, they are going to be back in the hospital system and the OHIP system and be taxing our system even more at that end, and that is a serious problem.

So yes, I probably will be more involved because of the type of reputation I have in this city. I do work with lawyers. I work with insurance companies. I am very often asked to do an independent medical. I have not seen the patient at all. They are going to trial; they want just one last opinion, and I feel comfortable making a judgement call at this stage about prognosis. But I do not know; I think it is going to become more costly if we do not have that vehicle to do that.

Mr Philip: What I hear you saying is that assessment is expensive and that in your opinion, from your personal experience as a practitioner of physiotherapy, there will be more assessment required as a result of this legislation than under the existing system. Is that correct?

Mrs Gilbert: That is correct.

Mr Philip: Thank you. I have no further questions.

The Chair: I have Ms Oddie Munro, Mrs LeBourdais, Mr Sola and Mr Nixon, for about a minute and a bit each.

Ms Oddie Munro: I would like to ask for clarification of some kind of the relationship between the act and the regulations. Certainly, the draft regulations are that, and I think that your brief is very informative, and you certainly make a good point for the inclusion in the act of either physiotherapy or the inclusion of health care practitioners and then going on to that.

I do not know if you are aware that one of the rules governing the commission was specifically worded to ensure that consumers had more protection, and in fact, it will be the obligation of the providers of the services and the claims—in this case, the insurance companies—to make sure that the person purchasing the policy and then seeking the claim has full access. I think, therefore, your suggestion that the consumer information go out quickly and in layman's language is an excellent one. I gather that your problem is, at the time of an accident, how do we get the information to that person so that he is not, under stress and trauma, arguing about what he thought his benefits were?

Mrs Gilbert: That is correct. The other thing too, though, is that I have had enough dealings with insurance companies to suggest to you that if they can access an OHIP system, they are going to wait for that. The OHIP system does not always guarantee that you are going to get care as quickly as you can either. This is a whole other issue. This is the issue of G code billings and physicians who are hiring anybody to do physiotherapy. There is so much overlap in the health care, so it is difficult, because unless you are really involved in the day-to-day of understanding what happens, you sort of say, "Well, why can't somebody go to another clinic?"

The difficulty, though, that I have had is that insurance companies are saying: "You can't go to X number of clinics in London, because they are not provincially funded. You have to go to the other." The patients do not know—I have to keep reading them their rights—that they do have that

\$25,000 in rehab benefits, and hopefully more. But how do they access that? How do they know what their legal rights are to access that?

Mrs LeBourdais: Thank you very much, Mrs Gilbert. I too appreciate what you described as an informal manner. That has not always been the way of our deputants, and for me, anyway, this is certainly preferable.

I guess I just wanted to address two points. I find it a little confusing that you do not seem to feel that there is going to be a benefit of the no-fault program for providing quick, speedy care; that the individual who has been injured will be financed and will have the ability to start within 30 days.

Certainly today, if someone is hurt and is not a terribly affluent person, he might sort of put up with injuries that could turn into something greater, or he might favour an injury hoping that the proof of the pudding would be there in a settlement situation. Against an individual who is affluent and can start treatment right away and worry about recouping later, there is an advantage already in place, so I am confused that you are not seeing a benefit to this.

Second, with regard to your own personal situation as an independent business person, I appreciate the point you are making, but I think we have to put a limit on the amounts. You, as well as many, are in a position of making more than \$30,000, which therefore allows you to have some discretion as to dollars that could be put into some disability insurance. I think you would have to admit that as an independent person, you could also stub your toe going down the steps in the morning and not be able to carry on your business either, if you did not already have some disability insurance in place.

Mrs Gilbert: Correct, but just to answer your last point first, then are we suggesting there is a myth that the insurance premiums are not going to go up? It means that you have to make sure that you have other avenues in place, if you are making—

Mrs LeBourdais: In excess of \$30,000, and we state that, that you would be wise to look into some additional coverage.

Mrs Gilbert: Right, that you were doing that. As far as accessing the system faster than what happens, with patients who do need any type of rehabilitation service, they are still, for the most part, going to be seen in the emergency room of the hospital and then probably by their family physician next. So the access—I do not think it is going to change. I think you are going to leave it up to the physician to decide whether the patient

should be home for two weeks resting, taking it easy; whether he should just try to go back to work and do whatever he can, or whether he should then start physio or anything else. I do not think it is really going to be the patient who is going to make that decision, unless he or she is really well versed in this or has had the experience of having an injury and what happens before.

Mrs LeBourdais: I am not saying it would necessarily be the patient. It may be a physician or other health care worker, but the patient will not have to be precluded from making that decision based on the fact that he will not be able to pay for it.

Mr J. B. Nixon: Very quickly, Mrs Gilbert, thank you very much for appearing before us. I think some of your concerns can be allayed with the assistance of staff clarification. It is my understanding that physiotherapy is an included medical service, because medical services, as they are being defined, are assumed to be much broader than just a doctor.

Mrs Gilbert: It is not spelled out, though, in the legislation; not the one that I looked at. This was a package from the government.

Mr J. B. Nixon: Perhaps Ms Parrish could respond.

Ms Parrish: We did some legal research on what the meaning of “medical” means, and it does not mean just a physician’s service. It was the conclusion that medical services would include physiotherapy but would not include things like occupational therapy and life skills counselling. That is why we specifically mentioned that separately.

But I think, as some of the members have indicated, this is a draft regulation, and if people feel that there is going to be a needless debate about whether physiotherapy is medical or not, that is something we can look at. But in terms of intention and in terms of research, I think it is fairly clear that physiotherapy is a medical service. But this could certainly be clarified if there was a sense that there might be a needless debate.

Mrs Gilbert: Physios do not like to see chiropractic written out and physiotherapy not.

Ms Parrish: Yes, I have to say we have had some interesting debates with various groups.

The Chair: My mother-in-law, being a physiotherapist, would tend to agree.

Mr J. B. Nixon: Having that said, I am hoping that would allay some of your concerns about access and so on. Thank you.

The Chair: Thank you very much for your presentation.

Before I adjourn the committee, the clerk will have flight instructions and/or tickets this afternoon. Just to inform you, we are leaving on flight

647, Air Canada, tonight at 8:30 to Thunder Bay.

The committee stands adjourned until two o'clock this afternoon.

The committee recessed at 1200.

AFTERNOON SITTING

The committee resumed at 1401 in room 151.

The Chair: I am going to recognize a quorum and call the committee to order and invite Mr Walker from the Halton County Law Association to come forward. A copy of his presentation has been circulated to the committee. Mr Walker, for the next half-hour we are in your hands, and if I can give you any advice, I suggest 15 minutes of presentation and 15 minutes of some questions and comments. Please proceed.

HALTON COUNTY LAW ASSOCIATION

Mr Walker: Ladies and gentlemen, my name is Leonard Walker, I am a lawyer from Halton county. I guess you have heard a lot from lawyers, unfortunately for all of you, I suppose.

I am here on behalf of our county association, which is comprised of the majority of the members of the practising lawyers in our county. The majority of those do not do any personal injury work or know much about insurance law, and I do not mean to say that I do because I practise insurance law from time time. Early on in my career, I did mostly criminal work. I am a member of several organizations that deal with trial work, both in Canada and in the United States. By default I was sent here by our association because I simply knew a little more than most about what is proposed.

We wanted you to know that our association in Halton county represents several hundred thousand people. We have Burlington, Oakville, the north end of the county as well. It is a very busy area. We expect that this area is going to boom in the next 15 to 20 years. We are dealing with a very successful community, Burlington and Oakville especially. The average income per household in Burlington in 1986, I believe it was, was more than \$50,000. That is only an average. We assume that is skewed somewhat by some of the upper-end incomes.

The upshot is, of course, that we are going to have a tremendous traffic problem several years from now. We are going to have to protect these people, and people come to us from time to time and say: "Listen, I've been hurt. What am I going to do about this?"

We are concerned in our county that what the lawyers have had to say to the government or the other members in opposition has been discounted by the fact that we are lawyers. We feel—I personally and our association—that it is a slight on us, that we are not being treated as adults, that

we are not really capable of considering what is in the public interest.

I grew up in the city of Burlington. I am a working-class kid who went to law school, and I am sure a few of you are as well. I raised my daughter from the time she was a year and a half old and she is 16 now and driving her own car, which is just a horrible thought to me, that she is out there somewhere and this law is being changed.

My background really is not important to you, except to say that I am not here to promote my own interests and make lots of money from insurance law. I have represented lots of people who are significantly injured and some who are not significantly injured, and I can tell you that the people who are injured all think their case is the most serious. They are all upset, they are all legitimately hurt and they are all anxious to see what can be done about it and get back on track.

The function of lawyers traditionally has been to stand between the state that wants to do something that may not be in the public interest and an uninformed public. Our concern in Halton county is that the public does not know very much about this at all, if in fact we do. I think that through the course of my comments you are going to hear that again and again, that we have been asked by our clients, by our colleagues and friends, "What does all this mean?"

Frankly, it is so complicated and subtle in some cases that it is very difficult to explain to them. The public at large does not have a clue about this, except that it is called no-fault and really it is not. There is a way that you can cover for total economic loss, if I understand it correctly, depending on your injuries. There are some rules of professional conduct that I refer to in the paper that I gave to you. Some of you know them quite well.

Of concern to me is the fact that the commentary following one of those rules says, "The admission to and continuance of the practice of law imply a basic commitment by the lawyer to the concept of equal justice for all...." Our main concern is that members of the public are not going to be treated equally if this legislation is passed in its present form.

The second commentary I refer you to is as follows, in part: "The lawyer should, therefore, lead in seeking improvements in the legal systems...." I think that is the association's position with respect to this legislation. The

difficulty in having a legal background is that we are trained to be rational, to look at the evidence, to add everything up and consider on a reasonable basis where we are going to go from here.

Mr Kormos: —wrong place. That is scary.

Mr Walker: I was just going to say, Mr Kormos, that when you are dealing with a body that is political, rationality really is not going to help you very much if people have already made up their minds. It is very disconcerting to say yes, but two and two is four and if you do this, that is what is going to happen. Somebody says, "We don't care about that." That is very frustrating for us, and I think it is frustrating for the public if they get the idea that something is going on and they are not having it explained to them.

Mr J. B. Nixon: It is frustrating for us to be accused of that.

Mr Walker: I am sure it is. I am not saying that anyone in particular is to blame because I think the government has a tremendous problem on its hands with what has happened in the insurance industry in the past 10 years. We all know that the insurance industry has come to you and said: "Look, we're in a lot of trouble here. What are we going to do about this?"

My concern and the concern of our association is that you should tell somebody about it and let them give you some input in an informed way. We are concerned also about the way that the minister responsible is dealing with this matter. Every time you hear the word "lawyer" somebody has something smart to say about that and we do not feel that that is especially fair.

Our county association, as a result of the legislation that was proposed and has passed the first reading, had a general meeting, which is unusual for us, in November 1989. Some of you may know that there was a resolution passed at that meeting and the text of it is in my paper that I have given to you. The major point is 3, which is on page 9.

We are concerned that the public in the province has not been properly informed of the effects of the legislation as outlined in Bill 68 and say that more effective efforts should be made by the government to inform the public. Really, that is what we are most upset about. We are not here to tell you how it should be or what we would like to do. All we are saying is that a lot of people, if they knew, I think would disagree with this, and our association takes the same position.

To give you some idea of the seriousness of how we view this, my understanding is—and believe me, this is before my time—that our association has never passed a resolution directed

to the government about any kind of law that was being passed or was being considered being passed. Our view is that if there is no response to something like that, then the government is really ducking the issue frankly.

The government strategy, in our view, has been to leave the Premier (Mr Peterson) and the Attorney General (Mr Scott) out of this. They are in very safe positions and have had nothing to say throughout. The Minister of Financial Institutions (Mr Elston), unfortunately for him, has been stuck with dealing with this. Our collective view is that the minister and the persons responsible for assisting him really have not dealt with the objections that have been put to them. They just change the subject and make a comment about who it is who is making the comment.

The example I give you is right out of the Hansard debates that I read a couple of days ago. The member for London North (Mrs Cunningham) I believe mentions something about a Michigan lawyer saying what he saw was barbaric. It was a headline. The response to that was: "If you want to be in Michigan, move to Michigan. This is an Ontario plan." Further on, Mr Elston says, "Well, some Michigan lawyer who says we are barbaric is not of much interest."

Our concern is that it appears that nobody is of much interest, if you are going to take that tack. If somebody has something to say that concerns a member of the public or a sitting member of the House, we hope it is of interest to somebody, that if they have a valid objection you are going to consider it and at least answer it.

The real issue we see is that the insurance industry is in a lot of trouble, we think, with this. We think, based on what has not been said to the public, that the government has been confronted by the insurance industry and has been told in no uncertain terms, "Do something about this or we're going to be out of here and you're going to have a bad situation on your hands." This of course would not be a good thing to have because the government's position is then, "We do not want government-run insurance, so we are stuck with having to placate the insurance companies." To some extent, I think that is attempting to be accomplished.

We have a couple of things to say about Bill 68 itself. First, raising the no-fault medical/rehabilitation benefits to \$500,000 is not going to benefit anyone, in our collective view. Having done these cases and knowing seniors who have done them, rarely do you collect the \$25,000 that is in force now. If the public knew that this was for the

extreme case or the odd case where someone was head-injured and needed around-the-clock care, it may be a better way to put it to them. But to suggest the benefits have been raised is not, in our view, very fair.

1410

The plain truth is that benefits for the exceptional case have been raised, but the payout is not going to be there. People do not in fact have \$500,000 of insurance that is going to pay. OHIP pays the medical stuff in this country, in this province. Over in the United States, where these claims originated, they do not. A lot of people were left out in the streets for lack of medical care.

One of our biggest complaints, our biggest concerns, is the fact that uninformed people are going to be subsidizing the industry. Because of the way the no-fault scheme has done away with the collateral benefits rule, as we call it now in civil law, there is going to be a tremendous saving. This of course is not a bad thing, to have a saving, and we recognize that as well.

What we do object to is that the saving will be brought about as a result of an unequal distribution of the loss. In other words, people who are not informed about what is happening and people who have tremendous sick benefits, union workers at Ford Motor Co, the Halton regional police force members and other regional police forces in the country, are going to find out their sick benefits are eaten up by accidents. If they receive them, they have lost it. Our view is that their own benefits are being legislatively donated to an industry that really does not require them.

We are also aware of Jack Carr's position respecting the economics of the whole thing in a very general way, and we really are not in a position to say one way or the other whether that is true. But what we are aware of is that no one has said it is not true, and that to us is a fairly damning thing to have happen. If someone puts something to you and says it is going to save \$600 million to \$1 billion in a year and nobody says anything against that—nobody has come and said, "That is not true; we figured it out and it's this much"—we have no reason to doubt what Mr Carr has to say. We think that a lot of people are going to be affected in our county and if they were informed, we think they would have lots to say about it.

Respecting the threshold, which we keep hearing about, we have read this. Our view is that this cuts off we do not know how many people. We have heard figures anywhere between 90 and

99 per cent of innocent people who may be cut off from recovering from total economic loss.

Our view is that it is just really not fair. We do not know who these people are in advance. The difficulty is that an injury gives rise to a disability. It is not a disability by itself, it depends on what this person does for a living, how old he is and other things. So the same disability in one person may give rise to something that is a horrendous claim; the same injury in another may give rise to a claim that is not very great. Neither one of those people are going to collect, the way this is worded, in our view. We are very concerned that people do not realize that. Some person could lose his whole business. For another person who may have to change careers in the same company, it would not be so bad. But they are both going to lose.

One of the problems we have in advising the public is that people want advice. They come to us and say: "Look, I've been injured. What am I supposed to do?" We are concerned that the outcome of litigation is going to be uncertain. That by itself is nothing new to anybody who does criminal law, but when you are trying to tell somebody, "Look, I think this could happen, or on the other hand this," it is going to cost you a lot of money to find out.

We do not want to put people in the position of having to mortgage their homes and spend their life savings on something when we are not reasonably sure of a probable outcome. We think the public is going to be on the hook for a lot of experimental trial and error with respect to the threshold test. We are especially upset I think with the fact that if we win the first time, before the trial, the defence can still do it again, will want to go through the whole routine, and people in fact do get a little better sometimes as time goes on.

We are aware that there was a plan considered that was put forward by the Insurance Bureau of Canada, that the present plan that is proposed in fact is deficient even from the suggestion made by the IBC. Really, the upshot of the whole thing is well stated by Mr Justice Osborne. His comment is at page 21. If premiums are not going to be increased and you are going to try and save money, the only way to do it is to take it from somebody who is getting something in there. That is what we see as the major problem in here. If benefits are being increased, you are going to save money and hold premiums down, but you are not going to be able to do it without taking the money away from somebody.

We think that, as I said before, 90 per cent of people are going to lose their rights to compensation for pain and suffering, for total recovery for economic loss. We are not able to assess what Mr Carr has to say but we have no reason to disbelieve what he says. He has done years of work as far as we can see in this area.

Our association is concerned about what we are going to do now, because our concerns, we would like you know, are very legitimate. We intend to pursue this. We are happy to discuss with our MPPs the situation and in fact we know them. We have a small community really. Barbara Sullivan is quite a nice person and so is Doug Carrothers, but we feel that nobody is listening to them. They have written to us and come to us and said, "Listen, if you have anything to say about this, we are happy to put it to the minister to help you be heard." Our honest view is that it is not going to matter at all because they are just being told, "Shut these people up and we will see if we can ram this through."

One of the things that prompted us to come here was something that appeared in the *National*. Now this is the Canadian Bar Association newspaper that come out once a month, I think. Mr Elston was interviewed in there by a fellow named John Beaufoy. One of the things that John Beaufoy had to say was this: "The minister said that despite public input, the government wants to stick to its timetable to implement the new auto insurance program in early 1990. He suggested that no matter what the public says, no-fault will remain a central part of the legislation."

If it has gone that far, if we live in a society where it does not really matter what the public says and, in the government's view, it can do what it wants, we have big problems here. Frankly, it does not look right; this is not what democracy is all about. The association is prepared to inform the public and we are going to do so in our county starting on 7 February. We booked a room somewhere that will hold a few hundred people and we intend to start telling them, "Frankly, we are horrified that it has come to that and we hope that something is going to happen in the next few months to change our position." That is really all I have to say, unless somebody has a question.

Mr Kormos: There has been a whole lot of lawyer-bashing, and the focus of the government's theme is to paint lawyers as the guys with their hands in your pockets. Quite frankly, as strange as it seems to me, it has been the insurance companies that have had their hands in people's pockets for years and years and years.

The government and the insurance industry are real happy about the fact that no-faults, paid out on a first-party basis, of course—as a matter of fact, one insurance company came here and with some pride talked about how now they would be able to do it one on one without lawyers mucking up the works.

Tell us, if you can, about your experience with your clients and no-faults. The insurance people are coming here, like the leopard having changed its spots, saying: "We know we have jerked people around in the past, but honest we are going to be good now. We are going to be charitable and generous when we pay people what they deserve and what is rightly theirs." What is your experience in that regard?

Mr Walker: The no-fault experience we have is that sometimes it depends on the company, and I am sure that the Liberal government is aware of that. Generally speaking, in a simple case, there is far too much paperwork, getting letters from doctors, send receipts in for physiotherapy equipment and for chiropractic visits; it is really something that cannot be supported on an economic basis. We end up doing it, at least in my office we do it for nothing. You never really get paid to do that, but I think it is something that has to be done. Certainly, the defendant's insurer is not going to pay it at the end if he finds out you never applied to the no-fault carrier.

I think Mr Justice Osborne had a better grasp of it. My recollection, without knowing for certain what he said, was that he said the delivery of benefits was abysmal. I think my experience would be, in a major case, that that is so. People are cut off, for example, at the end of the benefit period. If you are disabled, you can get the \$140 a week for two years and then you have to be totally disabled. Believe me, they will cut you off in two years and you can start an action and prove that you are disabled and everything else. It may mean that what the government suggests about the regulations and fines and all that stuff may work; we just do not know that it will. That is our experience.

1420

Mr Kormos: Lawyers have a phrase called "pro bono." I am wondering whether the insurance industry has any similar phrase or concept. Perhaps you could expand on that a little bit.

Mr Walker: It often happens that someone who is not badly injured will come to us, or someone who is a defendant and has been served with the papers and does not know what to do with them. Our policy—I can only speak for my

own office—is that we will talk to these people for nothing when they come in. They need to talk to somebody right away. It says right on it, “You have 20 days or you are going to have judgement against you.” There are cases where the legal industry kind of absorbs this short-term, immediate crisis-type problem.

My own view, tough, is that a lot of work in personal injury cases is not done for nothing. There may be cases in there—I can think of some—where the recovery is not very great, but you have really been jerked around to recover \$10,000. You cannot really charge what it is worth in terms of time. If you added up your hours, you would be getting paid about, I do not know, \$40 an hour. You are just going to have to take that if you want to go into the industry. It is like criminal work. As Mr Kormos knows, there are times when you spend two days in court horsing around with a file that is worth about \$500. You said you would do it; you have to do it.

I think that is probably fair for the other people who do personal injury as well. There are the few cases that you have to just do and do them fairly for the client and get paid something that is not really proportionate to what you have done.

Mr Philip: You make a point in several ways that under this bill a number of people would not receive compensation for economic loss that may not be in the way of payment in the form of salaries; they may receive some of their income from their business in dividends and other forms. I am wondering, is it your experience that under the present system at least there is a fairly large percentage of people who are receiving compensation that would prevent them from losing their business as a result of an accident, who would not be covered under this, and that therefore we are likely to see an increase in bankruptcies and small businesses going under as a result of loss?

Mr Walker: It is really hard to answer that. I can tell you that there would be situations where an injury to a sole proprietor would be devastating to the business. We really need to see some broader base of information to say about that. My experience would be that as disability carriers know, a professional man or a man who runs his own business is going to work unless he cannot go. A lot of these people will end up going to the office, going to the store and putting things on the counter, and they really should not be there.

I think that at this time it is very hard to say whether or not you are going to lose a lot of business because of this. My expectation is you will lose more under the new system than you

would have before because these people would just be cut right off. They do not make the wages. A lot of the income to a family, for example, is buried in what the business is going to be worth five years from now. I am thinking specifically of a law practice, for example. A business may be worth nothing the first year, but in 10 years it may be worth a lot of money to the family if you die or if you want to get out of it.

A lot of that is just going to be lost for ever, we think, not to mention the expense of pushing it. If we think that it is a borderline threshold case, then not only is he losing his profits of the business, but he is going to have to subsidize the claim and pay us to go, because it is just too big a risk to do something like that I think.

Mr J. B. Nixon: I will be brief. I want to thank you for appearing before the committee. I want to assure you that certainly I, and I think all members of the committee, have a lot of respect for the work that lawyers do in processing claims; personal injury litigation claims. You talked about the guiding principles that go to conduct, one being that lawyers are searching or have a basic commitment to a concept of equal justice for all. I am sure you would agree with me that none the less, among lawyers there are different visions of what “justice for all” means.

That is part of the whole process of the debate around here. I would just point out to you that one of the concerns many of us have is the 30 per cent of the people that go uncompensated for their losses, their injuries and damages in a tort system, because either they were at fault or do not find someone they can prove was at fault.

Having said that, you look at the Osborne report and at some of his recommendations. I want you to know that in this committee I have many times reiterated exactly the same quote from Osborne that you have, that if premiums are too high or cannot go any higher, then he says something has got to give—those are his words—and it is going to be on the bodily injury side, compensation for bodily injury losses. He made that point quite clearly. The point has been made in the committee.

That being said, if you are objecting to reductions in compensation on the bodily injury side, how far up do you think the public is prepared to accept premiums going?

Mr Walker: First of all, it is a very fair question. I just want to make it clear that we do not have an objection to the no-fault issue per se, we think the weekly benefits had to go up. There is no question that \$140 a week was a joke. Try to explain it to your client and he looks at you as if

you are from outer space. For \$140 a week—I make that in a day. Premium-wise, my experience with people in our county is that I ask them—when they ask me anything about the cost I say, “How much insurance do you have on your car?” “It is \$1 million or \$2 million.” “What did it cost?” “I don’t know.”

I do not really think they care. My experience is nobody knows what they pay on an annual basis within even a couple of hundred dollars. It is like buying a car. If somebody said, “What did you pay for your car two years ago?” you cannot really remember. At the time you are willing to fight for \$50, but now it is not such a big deal.

Our impression and my impression, frankly, is that people are willing to pay for what they get, but they do not want to get shafted. They want to see what is there. If I can just get back to this, we want to make sure that people know what they are getting, and know what they are getting into over this plan. In principle the idea of tort co-existing with no-fault is a good idea. I will say that. It is what we have now. But we have to up the ante on the no-fault side and be realistic about what can be recovered. There are a lot of cases out there in my view that should never be tried and never be started, and I agree with that. We have had cases—I have had cases—where the recovery was like \$2,500. It must have cost \$3,000 or \$4,000 in real time, never recovered, but it must have cost somebody that money to get that.

I am not sophisticated enough to know what that is going to mean to anybody in real terms, but we are concerned that people who are legitimately injured should not lose out to fund the whole thing. That is our major concern, that if someone has an injury that interferes with his employment or future income, let’s look after that person and try to get it out from a broad base of people who really are not suffering that much. That is what we see the problem as.

Mrs LeBourdais: I will try to be very quick. I just want to comment on a few of the things you have brought up. I agree with you; I do not think the public knows. On the other hand, I think to some degree the public opts out not only of the political process sometimes, but of the democratic process. They forget that they too have a role to play, just as we as legislators have a role to play and the legal profession, etc, has a role to play.

All the information they tend to get comes from a vested interest, whether it be the ads by FAIR or the ads by the insurance company, etc. They all have a particular position. I have been very sorry to see how much either of lawyer-bashing or insurance agent-bashing there has

been. I do not think any of us benefit from that kind of thing. I think too we can easily relate to what is happening. Just like you, I have a teenaged daughter. I was in a small accident over the Christmas holidays and I know how much that has preyed upon me during the decision-making process we are going through.

I will say, however, that what has really disappointed me is that some people of all ages who have come before us to speak against this policy did not understand the new no-fault system, so they were taking a position without really knowing and understanding that in many cases they would have been better off under the new proposed legislation than they had been under the tort system, but that only emphasizes that the public does not quite understand what they are getting in for.

Ms Oddie Munro: I am pleased to meet you because I was one of the people who took the time to respond to you. In my letter to you dated 27 December I spoke to my belief that the public participation and the fact that this committee is sitting was indeed taken seriously. I do not know if that means anything to you, but in the event that you had not received my letter, I thought that I would interject.

1430

On the rehab side, you say, and other people have said too, that a number of people do not take or have not taken advantage of the \$25,000 limit. In this current bill we have had, however, representation from a lot of professional people in the rehab field who have taken a lot of interest in making sure that definitions are sound and that services are delivered quickly, etc, and who seem to feel that the \$500,000 limit is not only realistic but would be used. In fact, I think they were looking in terms of long-term benefits for more than that. I wonder if you could respond to the reality as you see it now and whether, given this interest by everyone in the rehab field, that \$500,000 would be used at all.

Mr Walker: I hope I am not cut off in the middle of this. This is a very good issue you have raised here. What has happened in terms of medicine in the last 10 years is a tremendous integration of the disciplines. In other words, there was a great separation previously between medical doctors and paraprofessionals, and the doctors would say: “They are only nurses. They are only physiotherapists. This guy is only a psychologist.” What has happened is that because of the tremendous demand on medicine to treat people and care for them on a regular basis, the doctors have been forced to confront the fact

that these people do it better—these other people, the physiotherapists, the psychologists, the rehab specialists. These people are not covered by OHIP. There is a need now, and there will be a greater need in the future, to fund this kind of activity.

What I said to you earlier was that I do not believe that in the majority of the cases that is going to be so. I think that kind of care is going to come, as you have probably heard from the head injury people, but people who need specific ongoing care, training and treatment that does not have to be given medically will find the new coverage of \$500,000 to be a tremendous advantage. If that coverage is going to cover the future care—I do not know what you have done about the income tax implications of that, but you are also going to save money with that on the future care side of the defendant's insurance company.

I have a case in Halton where the fellow was terribly head-injured. The cost of the future care is something like \$4 million, and the gross-up for tax—you probably know about it—is \$1.5 million. That is a terrible loss. In this case there does not have to be insurance to cover it, but in terms of a waste to the public and a waste to the insurers that should be done away with, something should be done tax-wise. I think personally that the structured settlement idea is a good idea. People do not like the idea of no lump sum, "How am I going to get paid." But in terms of saving it is a good idea. Getting back to your question, I think it is going to be a small percentage, rather than the majority that will benefit from the \$500,000.

The Chair: I am going to have to interject here and thank you very much for your presentation. I believe you wanted to make a comment with respect to the grossing up.

Mr Endicott: Just to point out that this has been addressed in Bill 69, which was passed in December. It does provide for an automatic structured settlement wherever a gross-up for income tax is claimed in the case of cost of future care. That is the Attorney General's bill.

The Chair: From the Driving School Association of Ontario Inc, we have Mr Shields. Would you like to come forward. I believe your presentation has been circulated. We are yours for the next half hour. Am I pronouncing it right or wrong, the pronunciation of your last name.

Mr Shields: It is Jock Shields.

The Chair: Just have a seat. We are yours for the next half hour. If we could break it into about 15 minutes for presentation and 15 minutes for

presentation, we would appreciate that. Please proceed.

DRIVING SCHOOL ASSOCIATION OF ONTARIO INC

Mr Shields: Thank you very much for allowing us to spend a few minutes with you to talk about four topics on a brief presented by the Driving School Association of Ontario. We would like to discuss the continuation of driver education discounts for new drivers in Ontario who have taken an approved driver training course, either through an Ontario Safety League professional driving school, a high school program or a community college program.

The second point we would like to talk about is recognition of driver improvement courses, ie, defensive driving courses, which are recognized by the province of Ontario through the Ministry of Transportation, but at the present time the insurance companies do not recognize them for any particular insurance premium discount. I would like you to consider this as well.

We would also like to talk about affordable car insurance for driver education training vehicles. For the last point, we would like to speak about an option for self-employed personnel to sue for disability, loss of business and pain and suffering.

The first topic is continuation of insurance premium discounts. The insurance industry has been very generous for quite a few years in supporting professional driver education in this province and the savings of course can amount to quite a significant number of dollars. These courses are recognized by the Insurance Advisory Organization of Canada, the Association of Independent Insurers and the independent insurance companies.

The Ontario Ministry of Transportation and the Ontario Ministry of Education strongly support driver education. There are approximately 200,000 new drivers in Ontario. The professional driving schools train approximately 55,000 new drivers each year and the high schools and community courses train about the same number. That represents about 55 per cent of new drivers.

It is rather interesting. I am pleased to see some of the members of the standing committee on general government were also on the Ontario standing committee on administration of justice when our brief was presented on 28 January 1988. Brad Nixon, the member for York Mills, during the hearings in 1988 was the parliamentary assistant to Robert Nixon, Minister of Financial Institutions. Mr Nixon stated during

discussions that the uniform classification system the rate board will use in setting rates as a variable, and this was that driver education would be recognized.

Further, the Ontario Automobile Insurance Board under the chairmanship of John Kruger, in its report and supplemental decisions with reasons on 2 November 1988, recommended that a special classification should be given for those taking an approved driver education course. They went on further to clarify that an approved driving training course is one which is approved or meets the standards set by an appropriate Ontario government authority. That would be, for example, the Ontario Ministry of Education, the Ontario Safety League or any other body authorized in Ontario by statute or by an appropriate government authority to approve driver training courses.

It was therefore recommended that the standing committee on general government recommend that this continue under the Ontario motorist protection plan which will incorporate a provision for the recognition of driver education discounts for those drivers who complete an authorized driver training course.

The second point that we would like to discuss today refers to a driver improvement course. You have a red manual, which is the Canada Safety Council Defensive Driver's Manual. If one looks in the Ontario Driver's Handbook and wants to become qualified for a B licence—that is, a school bus licence—you have to have a driver improvement course. This is a course that is recognized by the Ministry of Education.

I operate a driving school in London, Ontario, and we probably would put through about 25 to 45 bus people. Of course, all of our students, and we train approximately 850 each year, every one of our new students, and these would be primarily teenagers, also get the benefit of this Canada Safety Council defensive driving.

Where this also can come into play—this is presently being done by the Ministry of Transportation on an experimental basis in which it has set up, in essence, a traffic violator's school. They have a group session where they will congregate eight to 10 traffic violators and have group discussions. What we would like to see from the Driving School Association of Ontario is to have this further expanded where anyone who has built up traffic demerit marks of six to nine demerit marks would be required to take a compulsory defensive driving course.

You may say, "Where are you going to get the delivery system?" This list that you also have of the Ontario Safety League approved schools consists of 233 approved driving schools right across the province. In fact, as of today—I was speaking to General Pitts—that now has increased to 245 approved driving schools in Ontario. So there certainly is the expertise in which this course could be readily available.

Jock Shields Driving School in London has also been doing defensive driving courses for companies such as General Motors of Canada, 3M Canada, Imperial Oil refinery in Sarnia and so on. So some of the insurance companies at the present time do recognize this. If fleet managers put their personnel through, they will keep their insurance rate at the same level.

But we would also like you to consider perhaps expanding this, primarily for those who are bad drivers through no fault of their own. You see those every day. All you have to do is go around any subdivision or on any highway and see all sorts of bad drivers because in a lot of cases, they just do not know. They do not know the finer points.

If someone builds up six to nine demerit marks, I think he should be brought into some sort of educational seminar with at least a one-hour car evaluation, and then he would be well aware. It is attitude, as you and I are well aware. How do we change attitude? With a lot of people, it is a matter of lack of knowledge. At least we can get to those to help reduce the accidents, the injuries and the fatalities that are taking place on our public roads in this province.

The next point that we would like to discuss is affordable insurance for driver education vehicles. With the 245 approved driving schools throughout the province, at the present time we have a checkerboard system with the insurance companies. There are some 140 insurance companies doing business, and I would say invariably probably 80 per cent of those classify us as taxi drivers.

This is a fallacy. We are not taxi drivers. We have had to undergo very rigid tests and examinations and meet severe standards laid down by the Ministry of Transportation, in accordance with the regulations in the Highway Traffic Act of this province. We would like to see the insurance companies in this province classify driver education instructors and vehicles in a different category from what they are presently doing.

We are also running into a lot of difficulty where someone—for example, I was speaking to

someone on the phone last night from Mississauga who runs quite a large-sized driver education school. She was mentioning that one of her instructors had a clean record, had been driving for years and had been paying \$1,200 per year. He left the driver ed field for a few years, came back, wanted to be reinsured and his previous insurance company would not even consider looking at him. He had to ask for a request from Facility Association and it went up to \$3,900.

Another colleague of mine in the Oakville-Mississauga area mentioned that he is running into exorbitant rates at \$5,000 per year. Of course, no one can afford this. Of course, the unfortunate thing is that there really is no tracking being done. This was brought up in our submission on 28 January 1988. The honourable Brad Nixon had mentioned that once the program was in place, they hoped to implement a system where they would track those taking an authorized driver education course. Of course, that program was never implemented, and to this day there still is no tracking. This is likewise with the insurance companies themselves.

We certainly would recommend that your committee look at this very closely with a view to getting a specific classification for the driver education vehicles in this province.

The last option that we want to speak about is for the self-employed to be able to sue for disability, business loss and pain. In last night's Toronto Star, it was rather interesting to note where small businesses in this province are the biggest creators of jobs throughout; 93.9 per cent is what this columnist, Herve De Jordy, was writing about. He said they play a big, big part. If, for example, one of us happens to get knocked out because of a serious accident through no fault of his own, we would have no recourse except for the \$450 disability, which in a lot of cases would probably put us right out of business altogether.

I can think of an example of how this works. About five years ago, I got clobbered at an intersection in which another party ran through a red light and put me in the hospital for 10 days. I had several broken ribs. Fortunately, I did not suffer any long-range disability. I did have a severed nerve in my left leg, which is still numb, but I recovered.

I went to my lawyer and I asked him to proceed with the claim against the insurance company. The claim was \$17,000, including loss of wages, pain, suffering and other incidentals. This claim worked back and forth between the adjuster of the other insurance company and my lawyer.

About a year and a half down the road, the adjuster on behalf of the other insurance company came up and said: "We will settle for \$7,000, all-inclusive." Legal fees were going to be around about \$3,600. I was going to have to go to the bank and try to get another loan to help tide us over. At that time I had about five colleagues whom I was assisting put bread and butter on the table, and I was finding it difficult trying to keep my head above water. Luckily, I happened to have a long-service armed forces pension which helped to get me over the mountain top.

However, the lawyer came down and said, "Well, what do you want to do about this, Jock?" It was quite easy. I said, "Sue."

"How much do you want to sue for?"

"Fifty thousand dollars."

Twenty-four hours later, I had my cheque.

A lot of us are in the position where we do not have the big bucks to hire the big lawyers to go and pursue an insurance company, and this is something I would like you to consider. How about where there is a conflict between the little fellow—and that is probably about 99 per cent of us—and the insurance company. We know that the Insurance Act of Ontario allows insurance companies to arbitrarily state, "We are assessing you the blame of that accident, regardless of whether there have been any traffic tickets or not." There is no argument whatsoever; it is there. I feel that the little person should have some avenue with which he can pursue his grievance.

I would like you to consider the thought of an insurance ombudsman who would be empowered either to disallow the complaint of the motorist or the victim concerned or to compel the insurance company to readjust that grievance, because I think this is something that is sadly lacking. We just do not really have that. It may be someone, as an ombudsman responsible to the superintendent of insurance or the Minister of Financial Institutions, as the situation may occur. There are certainly situations, physical, mental, psychological—it does go just with the injury itself. I think these are some of the things that should be addressed.

In summary, we hope that you would consider the points that have been brought out today: a continuation of driver education discounts for those taking an authorized driver education course; recognition of a defensive driving course by the insurance company for a further premium discount; consideration for affordable car insurance; a specific classification for driver educa-

tion vehicles and instructors, and the proposal to have an option to sue in certain situations.

I thank you very much and if any of you have some questions, I will certainly attempt to answer them.

Mr Philip: Thank you for an interesting brief and also for some very interesting literature, which I know I am going to read and that, hopefully, may save my life if I go through some of the exercises.

1450

One of the things basically that you are calling for is tougher standards of entry or issuing of licences or operating authorities, whatever you want to call them. My understanding is that the standards have not been changed substantially in 40 years, so that may be.

Mr Shields: You are speaking of driver education?

Mr Philip: Yes.

Mr Shields: They have been increased.

Mr Philip: No, the issuing of the operator's licence.

Mr Shields: Oh, of the G licence.

Mr Philip: Is that correct?

Mr Shields: I have been involved in the driver education field for approximately 14 years, and during that time, in London, Ontario, I certainly would have to pat the Ministry of Transportation staff on their shoulders for the calibre of perfection that they actually display. In fact, if I were the examiner in several cases, I think I would have failed some of my own students when I watched some of them. They would come through, and yet on the other hand, they are very stringent because they have only one responsibility: Are you driving safely?

I will give them credit for these seniors. I would train or prepare about 50 seniors a year. These are those 80 years of age and over, and they have to go each year for a driver test, an eye test and a road test. They are gentle psychologically. There are times when these seniors certainly should have their licences rescinded, and through the Highway Traffic Act and the Ministry of Transportation, I find they do have a reasonably stringent standard, at least up in our part of the country.

Now, from our association's point of view, we do tend to feel that perhaps there could be more stringent tests given, and of course, we do have ongoing committee representation with the Ministry of Transportation to try to resolve this particular question, say, with brand new drivers.

We give them now 10 hours behind the wheel, 25 hours in the classroom, and of course, a driver education course is not inexpensive, either. They would average around about \$400 a year.

I would say, "Give me someone for six months." I could train him to be an almost perfect driver, but it would be economic nonsense, because no one could afford that. So I suppose it is through trial and error and practice. Like myself, I was fortunate to have learned to drive when I was 16 on the back roads in Leeds county, not too far from Brockville, Ontario, a little place called Lansdowne. There are no fuzz around, no one would rat on you, and of course, when you were 16, you had your licence. What was the standard?

I went up to Gananoque and the examiner—of course, it was patronage in those days, where a local service fellow came out. I think it was a Mr Shine in Gananoque.

Mr Runciman: It must have been the Hepburn era.

Mr J. B. Nixon: I doubt it.

Mr Shields: No more of that today, I can see.

He found out that I was from Landsdowne. My dad ran a store. "Well, how is Bob?" Well, my gosh, they were in the same lodge together and the legion and the local chamber of commerce. He said, "Come on, lad, we'd better get started."

I went up one block, I turned right, I turned right, I came back, and that was my test. I was 16 years of age.

Mr Philip: But did he stop at the liquor store?

Mr Shields: If you wanted a chauffeur's licence, that would cost you an extra dollar. You cannot get away with that today, nor should you, either.

Mr Kormos: I should tell you that I have corresponded with and spoken with Doris Morrison, one of your executive, the secretary of your association, down in Welland. You talk about driver training courses, and we talk about standards required to get a licence. The fact is that there is no minimum number of hours of training, no minimum number of hours on the road that you have to have before you are issued a driver's licence.

Why would you limit yourself to saying insurance companies should be persuaded to offer discounts for people who go through driver training? Why would you not go so far as to say that nobody should be considered for driver's licence testing unless he has had an approved driver training course with a minimum number of hours on the road, behind the wheel, as a student?

Let's face it. We have all said more than a few times that money will never compensate for broken limbs, shattered backs, what have you. It is as close as you get. If our goal is to reduce accidents and really be serious about that, we are talking about making sure bad drivers do not get on the road, not dealing with them after the fact. The government could do it with the stroke of a pen. The way to do that is to require that before a person is considered for driver testing, he has a certain number of hours behind the wheel in an approved driver training course. What is wrong with that proposal?

Mr Shields: I would have to say, from a taxpayer's point of view and from an insurance company point of view, this would, overall, lower the rates. You would have less accidents out there, you would have better drivers and it would be completely self-supporting if this were a government mandate, that "you shall." I would find it hard to object to that.

Mr Kormos: Why will the government not do it?

Mr Shields: At the present time, that is not the situation and I do not think it is going to be made compulsory. I think it is a matter of increasing for the standards, as you said. All right, that is one way to do it.

Mr J. B. Nixon: Just going along with the previous question, Mr Shields, accepting that proposal, and it may have some merit, that every new driver must have some compulsory training, who should provide it and pay for it?

Mr Shields: Of course, I wear two hats, because I happen to be director of driver education for the Roman Catholic school board in London and there is a subsidy given indirectly. Now, I still get the same amount up front as on the other side with Jock Shields Driving School, but I believe this should be self-supporting by the individual himself, by the student taking that, because every one of us, when we pick up the paper, sees "Deficit financing." The province has it, the municipality has it, the federal government has it. I think there comes a time when we have to have a priority set, and driving certainly is a privilege. We know that.

Mr J. B. Nixon: A second question, and perhaps staff from the ministry can help me: My understanding is that under the bill, the rate board, the Ontario Automobile Insurance Board that Mr Kruger was in charge of, continues to exist, and the board, now the commission, will continue to have power to review rates and set rating and classification criteria. I am just

wondering if there has been any discussion of using the recommendation that came out of the Ontario Automobile Insurance Board regarding driver training.

The Chair: Do you wish to respond or get back with an answer later?

Mr Endicott: We will have to get back later.

Mr J. B. Nixon: Obviously, a similar committee thought it was a good idea two years ago. The Ontario Automobile Insurance Board thought it was a good idea. We should carry on and do it.

Mr McClelland: I was intrigued, sir, by your suggestion with respect to an Ombudsman-type office for consumers of insurance. I wonder if staff could very briefly outline the role of the commissioner or the commission. Is there an element of consumer advocacy with respect to the proposed commission under the Ontario motorist protection plan, and what might that be?

Mr Endicott: The role of the commission with respect to rating and classification is to review. Basically, the rights and the classifications for each company are to be reviewed on a case-by-case basis. They must meet the standard that is set out in the statute, which we can look at, if you like. If it does not, then a hearing can be held and at that point the public cannot have input into what the proposed rating or classification is.

Mr McClelland: And also, I think, in terms of the timeliness of service and delivery of benefits.

Mr Endicott: That would be something that would be looked at, as well, in the context of the rate-filing application or the classifications as well. That would be a factor for that. Aside from that, of course, there are regulatory provisions for investigation of unfair practices, or insurance company practices generally, and provisions for various sanctions against companies if they do not comply with the statute.

Mr Shields: I wonder if I could clarify one point. Last week I read where one of your members—I believe it was a comment he had made to a presentation made by the Canadian Federation of Independent Business. They were talking about the right to sue, and it was brought out that you should have additional disability insurance.

I took up that challenge. I went to my broker, who represents 63 insurance companies in the province, and I said, "All right, I want \$2,000 a month, in addition, disability insurance." "How long do you want it for?" "Well, until I die, if I am disabled."

Fine. They went through and they started to work out the parameters and they said, "By the way, how old are you?" I said, "I'm 63." "Sorry, you're not eligible." Also, it would terminate at age 65 and at 60 they cut it off, so there would be no protection available whatsoever. How many thousands more are out there in that situation? Hopefully, this would never happen but I just thought I would mention that.

1500

Mr Runciman: Thank you, Mr Shields. It is good to see you again. I recall your appearance before the standing committee on administration of justice and your recollections then about Leeds county as well. I just want to point out to you that the Progressive Conservative Party for a number of years has supported just what you are suggesting here, the creation of an ombudsman's office to deal with the considerable complaints in the insurance industry.

I am curious. You are in the training field. I know a comment has been made by a number of people with respect to teenaged drivers and the high risk they pose on the highways, especially young male drivers, and about placing much tougher restrictions on the granting of licences and perhaps limited licences in terms of the hours they can be on the highways and so on. I am wondering, from your own experience, how you would feel about restricting the availability of licences to that age group or perhaps the licence itself being somewhat restricted.

Mr Shields: I think it goes back to what Mr Kormos was saying also: improve the standards before you can get a G licence. We have all sorts of teenagers who have part-time jobs and they depend on their vehicles to be able to obtain these jobs and this would certainly be an imposition upon them. The thing is, we could say, "Don't license anyone until he is 70." Okay, no more problem. But if we did license them at 70, they would say: "They've got maturity. They have their background." But you would have just as many accidents, if not more, than among the 16 to 24 age group.

It is experience, background and knowledge that you pick up in seminars and in authorized driver education courses. We get them all the time. They say, "Boy, am I glad to take this." "Why?" "We didn't know." How do you get maturity and how do you get a fellow to keep his head screwed on right? A lot of teenagers have their heads screwed on right and are thinking correctly, but also there are a few who go by the wayside. But do not restrict it to the 16 to 24 group. Pick up the paper, "So and so, 30 years of

age; third time, impaired driving." It is attitude. How do we change this? How do we stop that?

A couple of years ago the chief of police of Toronto said that at any given time there were more than 150,000 people driving out there without licences. How do we correct this? How do we get them off the road to protect the public at large? I do not know. This is a dilemma we are all faced with, and yet we have to protect ourselves at the same time. I think it is improving standards before one is actually able to get that G licence. I think this will cut it down a great deal. Still, it is experience that is going to develop that polish and expertise as you go along.

Mr Runciman: Basically it should be made much tougher for someone to get a licence.

Mr Shields: I do not foresee that it is going to improve that much. If we react to education—that is an ongoing thing. We must keep educating. You get one generation done and you are starting all over again. Look at seatbelt usage. Millions have been spent by insurance companies and the government, and yet there are still only some 70 per cent that are using these seatbelts. How do we get the message through? For educators and public officials such as yourself it is a dilemma; you are thinking what is best for the overall public at large. It is a dilemma. You have a real task on your hands. I certainly congratulate you for the efforts you are all putting into this.

The Chair: Just a quick question: does your association have a position with respect to raising the driving age from 16 to either 18 or 19?

Mr Shields: No, we really do not have a standard such as that. What we are pushing for is improved standards before they get their licences.

The Chair: Thank you for your presentation.

Mr Shields: Thank you very much for the opportunity to spend a few minutes with you.

The Chair: From the Cheshire Homes Foundation, we have the executive director, Ms Debra Tomlinson, and a member at large, Darrel Murphy. The clerk has circulated a copy of your presentation. If I can offer any advice, for the next half hour please take about 15 minutes for the presentation and allow 15 minutes for some comments, questions and discussion. Please proceed.

CHESHIRE HOMES FOUNDATION

Ms Tomlinson: Just to tell you a little bit about my background, I have been working in the area of community-based services, attendant

care, for people who are physically disabled for about the last nine years.

Mr Murphy: I am also a co-ordinator of an attendant care outreach program. The agency is the Canadian Paraplegic Association. I have been providing attendant care to the community of the west end of Toronto for the last two and a half years and I have been a consumer of the service for the last nine years. I have been on various boards as well as vice-president of the Advocacy Resource Centre for the Handicapped. So I am well aware of the needs of the disabled in the community.

Ms Tomlinson: I would like to start by taking a few minutes to tell you what Cheshire Homes Foundation is about because that has some bearing on what we are here to say today.

The Cheshire Homes Foundation is a non-profit, charitable provincial organization dedicated to the development of community living alternatives for people who are physically disabled. It is about 20 years old and was founded by a woman named Margaret McLeod, who was a volunteer working at what was then called the Ontario Crippled Children's Centre. She became aware there really was nothing available for children when they grew up and became adults. They were often sent to nursing homes or chronic care institutions. That was the future they had to look forward to. She set out to fight for the rights of these young disabled adults.

Since then, 21 support service projects have cropped up in Ontario. They basically provide accessible housing along with attendant care, long-term care, for these young physically disabled adults, people who have mobility impairments, head injuries, sensory impairments. Each of the adults has a disability he will live with for the rest of his life. They will require varying degrees of support for the rest of their lives.

The independence and control that this attendant care offers to young people is very, very important. Institutionalization cuts people off from society, from work opportunities, from school opportunities, from paying taxes and from having fair advantage to compete in the marketplace. Disabled people need attendant care to do this.

Basically attendant care is just arms and legs assistance. It is just some help with the activities of daily living that we all provide for ourselves. It has a great effect on families as well. It can relieve families from the 24-hour responsibility of caring for someone. Certainly today with double-income families and people moving

around more, it is not as common that people can care for their disabled relatives in the home.

Right now there are three options for people who are physically disabled in Ontario. They are the group residences or apartment living, outreach services that are provided in the home, and private purchase of service arrangements. The first two options are funded through the provincial government and the demand exceeds the need at least 10-fold. Also, we cannot ignore the estimated 1,000 people with physical disabilities living in chronic care institutions.

Because we represent 21 apartment projects and group homes, it is our intent today to focus on subsection 8(3) of the draft no-fault benefit schedule regulation. I would just like to say that in regard to the needs of people who are head-injured, please refer to a brief that has been submitted to be presented to the hearings in Windsor by Janet MacLeod from Cheshire Homes Foundation.

Subsection 8(3) introduces a maximum monthly long-term care benefit, which is the lesser of \$1,500 or the cost of a group residence; \$1,500 breaks down to approximately \$50 per day. This is grossly inadequate. If you look at the cost per client per day, the per diem in a Cheshire-affiliated apartment project in Toronto right now can run as high as \$150 per day. This does not represent individual needs. This is a cost that is averaged out over anywhere from 12 to 28 people. So over one third of those people have care needs higher than that; the costs would be greater. Generally, group residences do not even provide services to individuals whose care needs are greater than that.

1510

These agencies have very, very long waiting lists. If someone were accepted in one of these agencies the \$50 per day would not be adequate to cover the agency per diem and the additional costs would have to be borne by the taxpayer through the provincial government. Some of the lower per diems in Toronto still exceed the \$50 by about \$20 a day.

If someone were going to purchase his or her service privately, \$50 would cover about three hours of care per day. Once again, this is not enough for someone whose injury is permanent or serious. These individuals would require in excess of six hours a day. Also, when purchasing care through a private agency, there are restrictions; there are four-hour limits or minimums. This really limits what an individual can purchase the service for and it certainly restricts his lifestyle. Once again, if someone is fortunate

enough to have backup family support, the \$50 a day is inadequate and the 20 hours per day of care, the responsibility for that, falls on the family once again.

The only alternative that is left then is institutionalization. This costs taxpayers approximately \$200 per day for a standard bed in a chronic care hospital. In rehabilitation hospitals the costs are greater and the costs to the individual and to society are much harder. If you have been institutionalized for any period of time, it becomes increasingly difficult to make adjustments. The prospects of getting back out into the community, getting back to work, getting back to school, are decreased the longer the stay.

Mr Murphy: I would like to carry on. As you can notice here, there are basically eight factors that we have brought up when considering the long-term care benefits. The first is the quality of care. The benefits that have been outlined are insufficient and they should be made sufficient so that the disabled individual is able to purchase staff who are properly qualified.

There are various staff in the community whom an individual could purchase. They can either purchase them through a nonprofit organization, which is at a reduced rate, or they could purchase them through a private agency. There are many out there, Para-Med, SRT, but those costs are exceedingly high. For an individual to ensure that he has quality staff, he would have to purchase the higher quality and paid individuals.

Location: It is very important that we look at where those people are located in the community. For somebody up in Kapuskasing who is disabled rather than someone in Toronto, to be able to ensure he gets the qualified staff, maybe up in Kapuskasing you would have to pay higher because the resources available in the community may be farther away than a pool of resources in Toronto.

The time of delivery is very important. Looking at the \$50 a day, that is fine based on maybe acquiring somebody in the middle of the day, but many times I, as an agent, have to send staff out at 7 am for a person who needs one hour of care on a Sunday morning. You may have to pay that staff person a higher wage, and especially late at night, having an individual staff person go in at 11:30 at night to put or assist somebody in bed, once again you have to pay a higher wage. I do not think that has been considered in the \$50 a day.

The degree of need is also very important because here there is no flexibility built into a

person's disability. It seems as if they have standardized the need of an individual who may need two hours of care a day, but there are many people out there in the community who may need up to eight hours of care a day. There is no flexibility, once again, in that wage, as well as the pool of resources, as a person who needs two hours of care a day may need very limited help but a person who needs high care may need a person who is more qualified to assist him in that activity.

Minimums: Due to the availability of staff individuals may have to rely on agencies for staffing and then obviously the benefits to be considered are the four-hour minimums. In areas way up north, they may not have, as I have indicated before, the pool of resources so that you may have to rely on the private businesses and they have minimums so that they can operate efficiently. For an individual who may only need one hour of care, unfortunately they are going to be put into where they will have to be billed for four hours. That is cost-effective for the private industries.

The going rates: Salaries of attendant care staff must be at least as high as those offered through the attendant care projects. The Ministry of Community and Social Services in the last few years has been looking at the wages paid to the nonprofit organizations that have staff and has just recently adjusted the wage adjustment on those individuals. There is no adjustment made in the \$50 being paid to the individuals so in the next few years, if wages go up comparably, there has been no allotment for that.

That carries on to inflation. Benefits must be indexed to inflation. Younger disabled individuals: Thanks to technology, individuals who are severely disabled have been able to not only move from institutionalization, but have been able to move into their homes. With the increased benefits of medical knowhow, disabled people are able to live a lot longer, so they will be around a lot more and there has to be some kind of inflation indexation set into that cost.

The last is the increasing care costs. Benefits must be taken into consideration. An individual who is disabled now, five years from now could develop and become more severely disabled so that the needs could increase, and because of that flat rate there is no accountability for increases in their needs.

In summary, clearly the proposed limits placed on long-term care people are inadequate. They do not support community living for people who are physically disabled. They severely

restrict the lifestyle choices available to disabled individuals, forcing a lifetime of institutionalization. Not only is this inhumane, but it is also a waste of human resources. It is a right of an individual to choose where to live and how to live and I do not think this has been considered.

If there are any questions, I can probably elaborate a lot more on these factors.

Mr Kormos: The real struggle here is not that there should not be no-fault; we have had no-fault in Ontario—it has been grossly inadequate—for a decade plus and it is a part of this package too, and rightly so. The problem here is that the government wants to take away the right of innocent victims to seek compensation for pain and suffering, the vast majority of them.

Now your work—I am not sure quite how I should approach this—involves people who did not get disabilities just because of motor vehicle accidents. You have got guys like me who get a little bit silly and dive into the swimming pool and hurt themselves real bad. You get all sorts of scenarios; I presume that is the case. What happens to the fellow, perhaps like myself, who takes a dive into the swimming pool and suffers the type of spinal cord injury that leaves me unable to use my limbs? What am I left with in the community?

Mr Murphy: I can tell you that. That is a perfect example of me with a disability. Just prior to my accident, I was working in sales. I had been in sales working for a leading wholesaler and I was financially set. I was on the go to being a real landmark of my company. I was very independent, very involved in sports and life was really good to me. I was also happily married for seven years.

Then all of a sudden I broke my neck in a diving accident. Before I knew it, I was sent to a rehabilitation centre out in the east end of Toronto where I was told that my lifestyle would be totally turned right over from what I was, that I would be rehabilitated or supposedly rehabilitated in the next year and a half. I really question the word “rehabilitation” in society nowadays. The doctors seemed to repair me the best they could and I have been physically rehabilitated. Unfortunately they never looked at the social side of what my life was going to be.

Within the next three years I was stuck at a rehab centre due to the lack of housing. There was no chance at that time. In 1980 there were no prospects of my getting back into the workforce and my whole social life changed. My wife and I became divorced.

1520

What happened was that I was put on a waiting list of many nonprofit organizations that would supposedly provide me with adequate housing. Those waiting lists were anywhere between one and 45, up to one of 200. Even in getting chronic care at the time, which I saw as no viable option, I was one of 200 people waiting to get in there.

In theory I can possibly leave that rehab in maybe 45 years, at the cost to the taxpayers. At that time I did not require a lot of the services that were being billed under OHIP in the institutions. All I required was somebody to help me out with my activities of daily living, which Debra has already elaborated. I did not need a social worker. I did not need a nurse to provide these services. I did not need a psychologist and there were various other things I did not need. Yet these were being billed constantly to the taxpayers. There were services out there, but there was not adequate funding so that I could move into one.

Mr Kormos: I am going to try to very fast because I do not want to cut into Mr Philip's time. What I am trying to say—I am listening real close to what you are saying—is that anybody who gets hurt in our society—whether it is from a diving accident, an ice rink accident, what have you—my goodness, surely anybody who gets hurt deserves a basic minimum standard of care available to him. At the same time what we are trying to tell the government here is that it does not mean there is a tradeoff. Everybody deserves that. At the same time the guy or gal who is the victim of the drunk driver surely deserves to be recompensed, to whatever extent money can do that, by that drunk driver.

Mr Murphy: Right.

Mr Philip: You talk about the chronic care institutions and you say that the only alternative then may well be that a person would end up in an institution rather than have the independence that would be provided by the kind of facility you provide, or indeed by being in his own home or apartment.

Can I ask you, what does this bill do that the present legislation or the present situation is not already doing? Are people not being driven into institutions anyway under the present system? Are you saying that this bill will increase the number of people who end up in institutions? Can you in any way quantify that or do you have an estimate of it?

Mr Murphy: There are a couple of things it is going to do. What it is basically going to do is

that with the inadequate funding of the attendant care required, it is going to force people to be in institutions longer. It is also going to put a lot of pressures on families.

A lot of families due to their cultures and backgrounds take in individuals who maybe should be living on their own, an individual who is 30 years old who all of a sudden has a severe traumatic injury, depending upon his background and culture, the family may want to take him in and say: "Look, we are going to take support of you. We are going to help you out for the rest of your life." This is fine and dandy but it is putting a lot of onus on the families which puts a lot of stress on the family life. As well, there could be inadequate quality of life that those people are receiving.

They are either being sent home, or they should be sent home, or they are being put in chronic care institutions again which is costly. The funding is just not enough to support the needs of those who want to go back in the community and become taxpayers again.

Mr Philip: So there is a human side of it, and there is also an increased cost to the taxpayer. This is hurting not only the victim of the accident but also the taxpayer.

Mr Murphy: The taxpayer, that is right, and the innocent bystanders, such as the family.

Mr Kormos: And putting money in the insurance industry's pocket.

Mr Murphy: Yes.

Ms Oddie Munro: On the no-fault benefits side, when we are looking at rehabilitation that would flow through to an injured victim, I guess we have heard that some people were unable to even access the \$25,000. You have mentioned your problems already. I would interested, if not now at a later time, whether you think there are any barriers that you can see to accessing the limit of \$500,000, because I think we are trying to get a handle on definitions of rehab, consumer information and a whole host of other things. I would be interested in that.

You might care to respond to that. The other question I have is that all of the factors that you have laid out which you think we should consider in coming up with a more realistic limit seem to indicate that information is available. Is it true then that it is not only in the Cheshire Homes group that we could access that information fairly readily?

Mr Murphy: Yes. There are organizations right now that are nonprofit organizations, such as Cheshire Homes Foundation, the Ontario

Federation for the Cerebral Palsied, Ontario March of Dimes, Canadian Paraplegic Association and so on and so forth. Those organizations have for years seen as their prime goal to rehabilitate individuals back into the community, and rehabilitation in their definition is basically all of what we have talked about. It is attendant care, it is employment and so on. They do have the expertise to inform the government of what is best for the individuals. This has been available and it has been written in the papers.

Ms Tomlinson: Recently the Ministry of Community and Social Services commissioned a survey, a review of support service needs in Ontario, 1988, so it is still fairly recent, which—

Mr Murphy: The John Lord report.

Ms Tomlinson: Yes. It deals with a lot of these issues around need and provision of service.

Mr J. B. Nixon: I would like to get a copy of the ministry's survey. Without having to go through all of that right now, can you give me an idea of what level you would like to see the \$1,500 figure set at, the monthly figure for long-term care, which as you know is separate and distinct from rehabilitation and medical services and nursing and all that?

Mr Murphy: Let me just give you a little breakdown on the dollar sign it is at right now. Basically, right now, let's just say we want to look at wages for an individual. If a person needs a certain percentage of care, and let's just say he needs four hours of care, right now, staffing minimum wages are \$11.24 an hour; for four hours you are into \$48. That is not including any administrative costs that the individual would have to pay for, as well as, as I have talked about, the time of delivery. Sometimes there has to be flexibility to pay an individual, the length of time, so I would really look at at least \$150 a day minimum. With an inflation—

Mr J. B. Nixon: Indexation.

Mr Murphy: Indexation put into that.

Ms Tomlinson: Also, consider lifetime in terms of a length of time, because people are living a long time. They are living until 70 or 80.

Mr J. B. Nixon: One more question: this is a question my colleague the member for Nickel Belt (Mr Laughren) asked, I think, the March of Dimes and someone else. Does it make sense to you that depending upon the place of an accident, ie, a diving accident in a swimming pool, a disability by reason of birth, something at work or something in an automobile accident, and depending on whether tort lawsuits are available

to find a guilty victim to sue and extract money from his insurance company, that depending on all those variables we societally compensate some, do not compensate others and compensate the ones we do at varying levels? Does that makes sense to you from a social policy point of view?

Mr Murphy: I think we have to ensure—that this was my first factor—that the quality of life is there and I do not care whose fault it is. We have to ensure that every individual has that right to the quality of life he had before or it is at a standard of what is now. An example is if an individual becomes disabled because of a car accident, what his life was before should be maintained, and also possibly increased. We have to show some kind of incentive. We have to show we are a leader in this country.

I hate to use the United States as an example—such a big country—but it is right now in the process of coming up with a bill that is going to ensure that a disabled person has those quality-of-life issues put into the bill. It would be nice to see Canada take a lead in that, especially when the Decade of Disabled Persons is ending in 1992.

With regard to people who are born with a disability, once again those same things that I have brought up have to be ensured to make these people not only feel good about their lives, but to ensure anybody else coming along in the world that this is going to be built into it.

1530

Mr J. B. Nixon: Thank you.

Mr Murphy: Can I just have one second?

Mr J. B. Nixon: Please.

Mr Murphy: To answer your question on the \$500,000, first, we feel—I think I can speak on behalf of Ms Tomlinson—that the \$500,000 is a very low limit. Ms Tomlinson and I were just working out figures. Unfortunately disabilities have been occurring with individuals. When I was disabled, there were very few women who were disabled. Now that women have taken a stand and become more outgoing, there seem to be more and more women who are becoming disabled, and there seems to be a lot of young people becoming disabled—an average age of maybe 16 to 18 years old. As we have elaborated, with the medical technology we have been able to come up with, people who are disabled are lasting a lot longer.

Based on around \$200 a day in a chronic care institution, and if the person was to live for 40 years, you are at \$800,000 already, with no

inflation. So that \$500,000 is really way under what it should be. There are two ideas to that thought as well. The \$500,000 paid up front would enable an individual to have the flexibility if their needs go up and down, and many times due to health reasons their needs can increase. If you are strictly limited to the \$1,500 a month, and if your needs go beyond that, who pays for that and what happens to the quality of life while you are waiting for the payment of that?

Mr Runciman: I will be very brief. I gather you are also very much concerned about the threshold, and especially as to how it impacts on the head-injured. Your representative of Windsor is going to go into more detail on that. Your accident was in a pool, was it?

Mr Murphy: Yes, it was.

Mr Runciman: Did you have any access to insurance as a result of a householder's policy or anything like that?

Mr Murphy: Very minimum access to insurance. Basically it was my fault and we left it at that. I did not really pursue it. This is one of the things a traumatic injury can do to you. Your priorities get a little turned around. My priority was to try to keep my life together, as it was before, and when that became at the time unrealistic due to a lot of factors—pressure from hospitals to get me out of rehab and into chronic care—I never really pursued it as greatly as I could have. That happens a lot nowadays. People's priorities get mixed up with a traumatic injury.

Mr Runciman: How do you personally feel after so many years now with respect to your acknowledging that it was your fault and that you did not have access to the courts? Is there any lingering resentment over that?

Mr Murphy: No. I just try to inform those people who are out there now in the position I am in. With the organizations I represent, I try to do the best I can so that they gain from the knowledge I did not have at the time. There are a lot of advocates out there who are exactly why we are here, to improve the situations that I did not have for myself, that hopefully will ensure the next person who comes along—any of us in the room right here—will not go through the same problems.

The Chair: Thank you very much for your presentation.

The Chair: From Associative Rehabilitation Inc. of London, Richard Doyle. I believe the clerk has distributed copies of the presentation. The next half hour of the committee time is yours. Perhaps I could make a recommendation for

about 15 minutes to go through your presentation and another 15 minutes to allow for some comments and questions. We would appreciate it. Please proceed.

Mr Doyle: Basically, what I thought I would do is read through it, and I have no objection to interruptions at any point if someone has questions.

The Chair: We will let you go all the way through and then we will interact.

ASSOCIATIVE REHABILITATION INC.

Mr Doyle: Associative Rehabilitation has provided vocational rehabilitation and related services to the disabled since 1981. During that period we have handled more than 5,000 individual cases on referral from insurance companies, lawyers, employers and government agencies. These cases stem from motor vehicle accidents, workplace accidents, other types of accidents, sickness and encompass disabilities which could be classified as major and minor in degree, and physical, mental and psychological in nature.

As our primary focus is vocational rehabilitation, we will try as much as possible to restrict our comments to what we see as the impact of this draft legislation on vocational rehabilitation. In doing so, we are assuming that you have heard in great detail from the insurance, legal and medical communities, and I know that to be true. In doing so, I would like to emphasize that our perspective is largely based on our experience with, and a natural empathy for the genuinely disabled.

In summary, we believe the legislation as currently drafted represents one step forward and two steps back. Let me itemize those issues on which we feel qualified to comment.

First, the positive:

1. The positive: the increase in the maximum weekly benefit from \$140 to \$450 is obviously a positive step, although also obviously long overdue given the erosion of \$140 over its 12-year life. We believe that dollar increase may motivate insurers to increase rehabilitation activity for the disabled and we see that as positive. There is also a school of thought that says there is a possibility that increasing the limit may extend the length of the claim, should a claimant happen to find neither \$450 nor 80 per cent of earnings comfortable enough to live with.

2. The extension of the weekly benefit definition change from own occupation to any occupation to 156 weeks, or three years, from 104 weeks, or two years, should provide a better time frame for a process of meaningful rehabili-

tation. Quite often definition change serves to interrupt the process, and while the extension must not be taken by those of us who supply rehabilitation as a licence simply to extend the process, it certainly will relieve some time pressures that currently get in the way of that process.

3. The increase in maximum medical or rehab expenses from \$25,000 to \$500,000 is obviously a positive step. Again, however, it is long overdue and we as a company have some reservations about its implementation, which I will get to later.

4. The extension of the benefit period for payment of those expenses to between 10 and 20 years appears to be an attempt to acknowledge the longer-term reality of a victim's needs, and this is good. Again, though, we have a reservation which I will address later.

5. The splitting of the \$500,000 medical rehabilitation expense limits and the \$500,000 long-term care funds so that neither is eroded by the other is certainly an improvement as it likely eliminates any muddying of what is currently a grey area between rehabilitation medical treatment and long-term care and the claims and expenditures therefor.

6. Certain of the definition changes seem to indicate a willingness or an intention to extend rehabilitation benefits beyond their current limits. For example, there is a broader definition of "accident," a broader definition of "bodily injury below the threshold," a broadening of section 7 expenses, and the broadening of the criteria for their eligibility. These all seem to indicate such intentions. However, further still, we would like to see a clearer definition of the term "necessary" as it applies to those expenditures.

While we view these changes as positive, we have some reservations that accompany them and a major concern which we feel overrides many or most of the positive things the legislation proposes. Again, I am trying not to slip into anything other than a vocational rehabilitation perspective.

From point 7 on, these are our concerns:

7: Income replacement does have an impact on vocational rehabilitation. There is not much doubt that the stress brought on by economic problems will affect, and does affect other aspects of the rehabilitation process. Let's not kid anyone; \$450 a week is an improvement over \$140 but does not go very far if it is to represent one's only access to income replacement.

We are not exactly sure; we are asking some questions here. Is this someone's idea of what an

accident victim can get by on or is it simply an attempt to estimate damages as opposed to allowing for actual? It seems to us a very real possibility that such a cap on income replacement may create another level of stress to impede the rehabilitation process. Just as the \$140 weekly has become virtually meaningless 12 years later, we see no provisions in the draft for indexing the 80 per cent, or \$450, to avoid the creation of an economic problem on top of a disability.

1540

8. While a \$500,000 medical rehabilitation expense limit appears to serve the disabled well, we voice the following concerns. We are not convinced that access and/or timely access to such a fund is a given for those in need of rehabilitation. On the question of access, there is currently a genuine lack of policyholder awareness now with respect to the \$25,000 funding of such expenses and what those expenses can be for, and with all respect to the industry, it is hard to envision an insurer simply easing the reins on increased funds any more readily than is currently the case. I really believe that is valid. That is their interest, that is claims control. What we do acknowledge is that the \$500,000 limit and the application of it may be much of an education process for all currently concerned, for the victim to understand his rights under the policy, for the insurer to recognize these payments as an additional loss control mechanism, for the doctor to expand his view of treatment to include rehabilitation, for "necessary" to be further understood and for the victim to recognize that rehabilitation is not or should not be simply a way of cutting off his or her benefits.

A positive thing of the current tort system is that it has generally ensured that those who sue and are entitled to these benefits get access to them where other avenues might have failed. At least in the short run, or until we have all become educated, we see this area as a problem. We wonder too if the mechanisms for resolution of disputes over these funds will not get bogged down just as readily as the current court system.

9. In terms of access to rehabilitation expenses, the incentives provided to the insurer to encourage the use of OHIP-funded services pretty much ensure for us that timeliness will become a problem. Successful rehabilitation as we know it relies to a great extent on early intervention and on the establishment of an ongoing, timely process thereafter. Our experience with hospital and other currently OHIP-funded services would suggest that they are already strapped and that waiting lists are

common. From a pure timing point of view, the additional burden being placed on OHIP and the lack of incentive for an insurer to look elsewhere is a block to good rehabilitation.

10. While the extended benefit period for payment of medical rehabilitation expenses is a step in the right direction, it still seems to imply there is time limit to a victim's need in this area. We do not believe this is true and suggest that it be extended further, provided the link between the accident and the expense remains valid.

11. This is our major concern, and it deals with the nature of the threshold system. This concern, for us, outweighs the positive aspects of the legislation and, we feel, should be changed. Our comments in this section are based purely and simply on the people we see every day.

First, the threshold is far too restrictive. The restriction to those cases involving "permanent serious impairment of important bodily function caused by continuing injury which is physical in nature" is simply off the mark with respect to ignoring the psychological effects of an accident. They exist, and it certainly seems to us that they can be as devastating as physical injury. The threshold must be changed to include psychological and mental injury. Pain and suffering also exist, and they exact a cost from an individual in terms of his ability to work, his ability to learn and his ability to fully experience life. While we understand the fiscal motivation for eliminating pain and suffering as a basis for suit, we suggest that the pain and suffering nevertheless continue to exist. Compensation will not remove it, but an acknowledgement of it is very much a positive thing in the rehabilitation process.

With respect to economic loss, the elimination of the right to sue for most cases—and we have seen estimates ranging from 85 to 95 per cent—is just plain mystifying to us. What the legislation effectively does is increase but limit the weekly income replacement to \$450, increase the rights to rehabilitation and take away the right to maintain a pre-accident income stream and possibly, therefore, a pre-accident standard of living. Again, trying to stay within our rehabilitation perspective, does this tradeoff mean to imply that rehabilitation is expected to restore a victim to a pre-accident level of functioning? If the tradeoff indeed is to balance for the disabled—that seems to be the implication and that is not correct. Rehabilitation does not, except in infrequent cases, restore to a pre-accident level of functioning but to a post-accident optimum level of functioning.

Economic loss can have a serious emotional impact in addition to the obvious fiscal ones, and we again suggest that the threshold as set excludes a number of average victims and will constitute yet another barrier to successful rehabilitation. To be injured in an accident is bad enough; to be then put at economic disadvantage because of it is worse still, and yet for a large number of our cases, be they self-employed, sole-income earners in families, uneducated factory workers, those whose injuries are deemed or will be deemed not to be permanent, serious or physical in nature, that is what this legislation will create, another class of economic disadvantage. While we certainly recognize problems with the tort system, especially with respect to timeliness and, within our exposure to a certain degree, with costs, we still see a place for recognition of pain and suffering, perhaps with a cap, for lowering the threshold to allow for actual economic loss and to include those disabled who currently stand to be excluded from and not served well by the legislation as it now stands.

In closing, we feel there are positives to the draft legislation. On balance, however, we feel much is being given away to get that which is, for the most part, long overdue. Ours is more a social view than an economic one. We are simply asking our legislators perhaps to view this legislation in that way. Our perspective is from the view of the people we see every day. We ask those people responsible for drafting this legislation to subject themselves to the same test. If you were a victim, especially if you were an innocent victim, how would the legislation personally affect you?

Mr Kormos: Of course, insurance companies came here and they think this is the greatest thing since buttered popcorn, this legislation. They think this is just jim dandy. Lawyers have been here, not really in great numbers, who have analysed the legislation and said, "This is horrid legislation because it is going to deny innocent victims the right to be compensated," but then the bulk of the people who come here are people like yourself, or indeed people who have been victims, along with a whole other range of people who, from a variety of perspectives, say this is bad legislation. Not all, but some have the perspective that it is legislation that is designed to create profits for the insurance industry by plucking that money out of the pockets of victims and taxpayers. You seem to have a good feel for the distinction between no-faults, because you support the concept of no-faults, do you not?

Mr Doyle: Yes.

Mr Kormos: And at the same time recognizing that innocent victims deserve to be compensated for pain and suffering. I should mention it is my understanding—and I do not know a whole lot about personal injury law—that the Supreme Court of Canada has imposed a cap on pain and suffering awards in a group of cases that lawyers call "the trilogy of cases." So there is a cap already, a maximum, somewhere around \$200,000 or \$220,000, and when you think about it, you think about some of the people I am sure you work with, some of the horrid injuries that they have suffered as innocent victims, and even then you realize, "My goodness, the Supreme Court of Canada says \$200,000 or \$220,000 is a cap." In any event, no matter how unfair that would seem, there is a cap. So I guess what you are saying is that you agree, and regardless of fault, that everybody should be entitled to certain things, like wage replacement, rehabilitative costs, medical expenses, those sort of things.

Mr Doyle: Yes.

Mr Kormos: But that innocent people should be entitled to excess economic loss.

Mr Doyle: Let's backtrack just a second. I am not sure that anyone should be entitled to excess economic loss.

Mr Kormos: Sorry, that is in excess of the no-fault portion. I am talking about the part that the no-fault does not compensate for. So innocent victims, in addition to what the no-faults provide, should be entitled to their real or total economic loss, plus to compensation for pain and suffering.

Mr Doyle: Yes.

Mr Kormos: And loss of enjoyment of life.

Mr Doyle: Yes.

Mr Kormos: And it does not offend you that a person who is not an innocent victim, maybe a person like—let's say if I drove my truck recklessly into a tree, a single-car accident, and it was clearly my fault, it does not offend you that I would not be compensated for pain and suffering but only for the no-fault part of it.

Mr Doyle: It would only offend me if you were put at disadvantage because of the system. I hope that is not a nonanswer, but it would only offend me in that most accidents are accidents, and while there may be charges, not all accidents are drunk driving and not all accidents are reckless driving and that sort of thing. Accidents

are, quite often, just fortuitous. We met in the wrong place at the wrong time.

1550

In that sense, I would hate to see anyone denied access to the no-fault portion of that. On a personal level, something inside me still says that a sense of fairness should be appealed to and that the person at fault should perhaps not be entitled to as much as the person not at fault. But that is a personal point of view rather than, I think, a point of view with respect to rehabilitation.

Mr Kormos: If a drunk driver runs into me and hurts me, you see a distinction between that and when I am driving carelessly and drive off the road all on my own.

Mr Doyle: Oh, absolutely.

Mr Kormos: Thank you.

Ms Oddie Munro: You are asking for a clearer definition of "necessary."

Mr Doyle: Yes.

Ms Oddie Munro: Would you reject, then, any test of reasonableness, and would you extend "necessary" to be the objective, or at least the gleaming from the advice of many people who would have been asked for their expertise on the rehabilitation side?

Mr Doyle: What I am drawing on there is a current situation that we have with long-term disability carriers, for example, and medical advisers for an insured where sometimes the word "necessary"—what is necessary for what the doctor suggests might be necessary, what a patient feels is necessary and what an insurer says is necessary, all using the same word, turn out to be three different things. And then there is no end of battle over it.

All I am suggesting is that I like the fact that we have basically taken the word "essential." To me, "necessary" is slightly broader than "essential." But a clear definition of that, with input from those types of parties, might avoid an awful lot of dispute down the road. We see those disputes now, and again, I am suggesting we could head them off.

Ms Oddie Munro: The other thing I am wondering is that when you speak about restoring the accident victim to a post-accident optimal level of functioning, to what extent you, in your current role working with insurance companies, have been involved in the placement back into the workforce through rehabilitation.

Mr Doyle: Extremely active.

Ms Oddie Munro: I guess what I am trying to get at is, is there a clear line? Is there a difference,

in your view, for the people who are referring you between the insurance companies' lawyers, government agencies? Do you feel that this bill would restrict or enhance your ability, on the rehab side, to return to whatever extent possible an accident victim to the workforce, or do you feel that you would be subject to a number of barriers?

Mr Doyle: I think, as it is written, there would be a number of barriers there. I would suggest that they are always going to be there on one level or another. Again, it is the nature of an insurance company. Their business is claims control.

Quite often claims control, as in money they are paying out, is at odds with what we are suggesting in terms of, "We need \$500 for retraining of this individual." Those types of barriers will always be there but, for the most part, can be worked out.

What I would like to see in legislation is those doors open to improve it. I would say it is going to hold it at status quo. You have attitude changes and things to work on, and that sort of thing, and education to work on, but I think the possibilities are there in that legislation to open it up so that placement of the disabled becomes much easier. Basically, it becomes a right as opposed to a hard-fought privilege that it now is.

The Chair: Mr Nixon, two minutes.

Mr J. B. Nixon: Let's assume for just one moment, for the purposes of my question, that the total pool of premium dollars is a constant, it is not going to change, because the general public expression has been that we do not want the premium pool to increase. In other words, we do not want individual premiums to go up.

The question then becomes how you allocate those premium revenues among various claims. Obviously, this bill allocates far more on the no-fault side and restricts on the tort side. That is a tradeoff that has been taken and people are finding problems with that. The question then becomes, if we are going to reallocate complete access under the tort system to the premium pool and an expanded no-fault pool, where is the money going to come from? The only logical conclusion is that it is going to come out of the insureds' pockets, the people who are buying the insurance policies. What is your view on how far premiums can go up before we reach a mass level of intolerance? I suggest to you that some believe we are there now.

Mr Doyle: I am aware that some believe we are there now. Again, speaking personally, I do not have any problem with my insurance rates. I have never looked on driving necessarily as a

right. A privilege has costs, and one of the costs is insurance. I am like the next guy. I do not want my insurance premiums to go up by 75 per cent or 50 per cent next year.

On the other hand, because of the work I do, that is a tradeoff that right now I will make. I know you are at that stage of public intolerance, but I would suggest also that the public may not be in tune with all the fine print in this legislation in terms of what they stand to reap should they be in an accident. I am not sure which intolerance is going to be worse. From where I sit, the intolerance will be worse when I am in an accident.

Mr J. B. Nixon: Thank you.

The Chair: Mr Philip, you had a supplementary?

Mr Philip: It was not a supplementary. It was a question. I wonder if, for the sake of the committee, you can take a typical client or a client whom you have in mind, somebody whom you have been dealing with, and tell me what that person's life is like now under the present system and what you think his or her life would be like were this bill to have been in place, say, five years ago whenever that particular individual had that injury.

Mr Doyle: I could do it in very general terms. I think probably the most common example is going to be a blue collar worker who is currently making \$42,000 a year or something at a factory, or \$35,000 or whatever, and is in an accident.

Notwithstanding the existence of some other income replacement plans, and I am still fuzzy on exactly how those are all going to tie into this—my understanding is that this is low on the pecking order when it comes to payment—basically, as it stands right now, if he is out of work for two years—let's use \$40,000 as an example—he will generally go to court and he will collect \$80,000 for economic loss and probably collect something for pain and suffering. I would suggest that on that size suit he might collect as much as \$20,000 for pain and suffering. It could be more; it could be less, I suppose.

Depending on the circumstances of the accident, there would be some recognition of the trauma associated with his wife who was sitting in the car next to him, who maybe worked part-time as a secretary and that type of thing. And he will have an entitlement to rehabilitation, perhaps through someone like us, through his insurance carrier, or through someone. Basically, what they will try and do is take his injury and work with it so that at the end of the time when he

is medically released to go back to some kind of work, he can do it.

1600

Assuming at the end of those two years that he can go back to the same job, if the \$80,000 settlement works, it is fine. Assuming that he cannot, that he no longer able, that his job was standing and twisting something here and he can no longer stand because his back is wrecked and the employer is unable to modify the work environment so that he can do his job sitting or he is unable to turn him into an accountant so that he can do his job sitting or something like that, he is probably going to have to look for work outside.

This guy has grade 7 education. He has worked in the factory his whole life. He is not going to find something in today's work environment to pay him what he was earning there. Under this legislation, the answer is basically: "Tough luck. You can live on \$450 a week." He probably cannot. He has probably got a house at stake, a family at stake. That is the kind of gap I see happening on those standard types of injuries.

I do not want to get into the good whiplash and the bad whiplash types of cases, but those standard types of injuries that happen very, very easily are real and happen to people who do not have all the potential in the world when it comes to retraining. He may be making a good buck in a blue-collar job. He will not be able to make that under the new legislation and therefore stands to lose a great deal personally.

The Chair: I am going to have to interject here.

Mr Philip: I just wanted to summarize.

The Chair: I appreciate that.

Mr Doyle: It was a long answer to a short question. Sorry.

The Chair: We may get into the same kind of discussion, because the next presenter is Dr Corey, who is with the Behavioural Health Clinic. I believe the clerk has distributed copies of Dr Corey's presentation. If we could, as in the past, keep our comments to about 15 minutes and allow 15 minutes for some dialogue and discussion, the committee would appreciate it. Please proceed.

BEHAVIOURAL HEALTH CLINIC

Dr Corey: This must be the afternoon for rehabilitation to be discussed. I have worked in the field for the last 12 years. I am founder and director of Behavioural Health Clinic, which is an independent health care facility specializing in

the treatment and rehabilitation of individuals suffering from three different types of injuries: chronic pain resulting from soft tissue damage, mild to moderate closed-head injuries and post-traumatic emotional disorders. These encompass a fairly large number of the types of injuries that are incurred in automobile accidents.

The clinic assesses and treats approximately 500 cases per year. Patients are referred by insurance carriers, the Workers' Compensation Board, lawyers, physicians and vocational rehabilitation specialists, such as the gentleman we just heard from.

I want to address you today on the subject of rehabilitation. I am concerned that in all of the sound and fury about premiums and the loss of the right to sue, we can lose sight of the main reason why we have insurance, which is to protect us from catastrophic loss. When this loss consists of a personal injury, no-fault insurance can provide specialized treatment and rehabilitation services that are not normally available within the OHIP system.

The goal of rehabilitation is to restore injured persons to their pre-accident status in so far as it is feasible to do so, and it is not always feasible to do so, as has been pointed out. Since the end of the Second World War, the technology of rehabilitation has improved substantially. I use the term "technology" loosely to describe methods, strategies and knowledge within the field. We now have the capacity to reduce disability, pain and suffering to an extent that was previously not possible.

I want to focus on the impact that Bill 68 will have on the rehabilitation of those injured by automobile accidents. First of all, I want to stress that timely and effective treatment and rehabilitation can reduce pain and suffering, psychosocial damage to families, unnecessary disability and the cost of injury claims. For example, a study conducted by the state of Michigan shortly after its threshold no-fault system was introduced demonstrated that every dollar invested in rehabilitation saved \$9 in claims. By saving claims dollars, rehabilitation can also help to reduce premiums.

In my experience, the current tort system, with an add on no-fault, fails in too many cases to provide timely and effective rehabilitation. The proposed bill has the potential for improving the access to and the timeliness of rehabilitation. With this in mind, I would like to comment on four aspects of the bill that could hamper the rehabilitation process.

First of all, I would like to comment on the threshold definition. The proposed threshold definition clearly excludes trauma, for which no continuing physical damage can be found. This will have a major impact on injured persons suffering from chronic pain syndromes as well as closed-head injuries. Persons so injured can suffer from serious and permanent disabilities without there being evidence of continuing physical damage. The vast majority of patients seen at my clinic fall into this category, and without appropriate treatment, their disabilities could become serious and permanent.

Others have commented on the discriminatory nature of the threshold. I would like to add that it can also have the effect of discouraging timely and effective rehabilitation, an effect, I am sure, that is not the intent. Injured persons who understand that full economic recovery is not possible unless physical damage can be found may focus their efforts on finding physical damage instead of focusing on getting better, and they will do so by going to doctor after doctor, trying to find that physical cause.

In chronic pain conditions, for example, this process already happens to some extent but, in my opinion, will be greatly exacerbated by this threshold definition. This will hamper rehabilitation efforts. I would like to see all injured persons, regardless of the type of injury, be allowed to recover for economic losses over and above the no-fault limits.

Second, I would like to comment on the guaranteed provision of rehabilitation. To be effective, rehabilitation needs to be timely. Under the current system, many unnecessary delays can be encountered in obtaining funding approval for necessary treatment and rehabilitation. In my experience, this produces a higher incidence of disability than is necessary.

The authors of Bill 68 have anticipated the need for an alternative dispute resolution mechanism to more rapidly address disputes than is currently the cases. I believe that this is an improvement over the current system but that there will still be delays. Furthermore, the authors of the draft regulations have specified that certain aspects of rehabilitation should continue while the ADR system is under way, and I agree with this. I would like to see this provision expanded to include all aspects of rehabilitation that are recommended by a registered health care practitioner.

The Minister of Financial Institutions, Murray Elston, has stated that Bill 68 will guarantee access to rehabilitation. This is a lofty and

commendable ambition but, in my opinion, has yet to be achieved by the bill, since rehabilitation services that are approved too late are really no better than not receiving rehabilitation at all.

Third, I would like to comment on the cap on long-term care, which has already been discussed much more thoroughly than I have here. Bill 68 provides for a maximum of \$500,000 for long-term care. It should be pointed out, however, that rehabilitation can be ongoing concurrently with long-term care. Unfortunately, the authors of the legislation have capped these long-term care expenditures at \$1,500 per month. This is the equivalent of \$50 a day. In my experience, this amount is inadequate and may produce living situations or stress factors that undermine concurrent rehabilitation efforts. For this reason, I would recommend that this cap be doubled to \$100 per day, or the equivalent of \$3,000 per month.

1610

Fourth, I want to address the cost of living provision or the lack thereof. As I am sure this committee is aware, the last increase in weekly indemnity benefits was in 1978. The current cap on weekly indemnity benefits is \$140 per week. In many municipalities this is less than that provided by welfare. The resulting financial hardship produces unnecessary stress on many of the patients we work with, which further hampers rehabilitation efforts. It is very difficult for patients to focus on getting better when they are worried about next month's rent cheque. We should try to avoid the same thing happening under Bill 68.

The \$450 weekly indemnity, in my opinion, is barely adequate and its purchasing power will quickly erode with inflation. As you know, provision has been made for rehabilitation to carry on for as long as 10 years after an injury in the case of an adult. Imagine, if you will, the situation of a person head-injured in 1990 who, in the year 2000, is undergoing rehabilitation on an inadequate living allowance. Rehabilitation cannot be expected to succeed under these conditions.

In conclusion, in my experience the process of rehabilitation is hampered by an adversarial environment. Quite frequently we, as service providers, get caught between insurers and plaintiff counsel within the tort system. Even when insurers are no-fault providers, it is difficult for them to break out of the adversarial stance.

In so far as Bill 68 offers the hope for a less adversarial environment, I am encouraged that it

will enhance the capacity for rehabilitation to work to its utmost. If the above recommended changes are made, I believe that the process will be further streamlined and encouraged. This can only result in less disability, pain and suffering for the victims of automobile accidents in Ontario.

Mr Philip: The argument by government members is that this bill will decrease the adversarial problem that is now experienced by people who are trying to obtain compensation as the result of an accident. Other people who are practising in the field of medicine or rehabilitative services of various kinds say that the argument as to what a permanent, serious impairment is will actually create so many adversarial situations that you are not going to decrease the adversary aspect at all.

I wonder if you can tell us, do you feel that there will be a great amount of difficulty in coming to an agreement between the insured and the insurance company as to whether or not that insured person has suffered an accident and suffered a permanent, serious impairment? If not, will this not result in more litigation?

Dr Corey: I believe, at least in the beginning, there will be a lot of litigation around that subject, particularly in the grey areas of chronic pain syndrome and head injuries. They are good examples of that. That is why I am concerned that people who are in that situation may be focusing to a greater degree on that issue rather than focusing on the other issues of getting better, recovering and so on. Outside of that grey area, people who do not have any claim for a permanent or serious problem, I am hoping the bill will reduce the adversarial environment and help to encourage the rehabilitation process.

Mr Philip: Would you not agree that by putting in the permanent, serious impairment aspect into this legislation, you are increasing an adversarial component that was not there before under the present system?

Dr Corey: Again, I think that is true for the grey areas. We are all going to agree that a quadriplegic fits that definition. We are all going to agree that a minor whiplash does not fit the definition. The grey areas are going to be very difficult, there is no question about it. I am not in favour of that particular definition. I think it is discriminatory towards those who do not have clear-cut physical damage.

Mr Philip: In your personal experience as a practitioner in this field, what percentage of your

cases would likely fall under this grey area and therefore likely mean increase in litigation?

Dr Corey: A good percentage. Not as many as 50 per cent but perhaps 30 per cent to 40 per cent could be in the grey area.

Mr Philip: So the legislation introduces an element that will probably cause litigation or an adversarial effect of some sort in 30 per cent to 40 per cent.

Dr Corey: At least in the beginning. Until the precedents get sorted out, I am sure it will.

Mr Philip: One last question. You have made a number of very substantial recommendations for changes in this bill. If these changes were not brought about in the legislation or in legislation and regulations, would you be better off without it? In other words, is the old system without your major changes better than the system being advocated without the changes that you are advocating?

Dr Corey: On balance and looking at it strictly from a rehabilitation perspective, I think the current bill is better than the current system. Bill 68 is better than the current system.

Mr J. B. Nixon: Thank you for appearing before us. We appreciate your coming.

One thing I should let you know is that there has been some debate about whether closed-head injuries exceed the threshold or not. We have heard from yourself and Ray Rempel from the Ontario Head Injury Association, and I think someone who is appearing after you today will make the argument that they do not. None the less, we had material tabled with us from the Insurance Bureau of Canada stating that the insurance companies assumed that the closed-head injuries exceeded the threshold. I suspect that would reduce significantly the grey area you are talking about if that turns out to be the case.

Dr Corey: I might point out that 75 per cent of closed-head injuries are mild, and that is defined by the duration of post-traumatic amnesia. I know of no case where there are clear physical signs of damage, yet there can be long-lasting serious and permanent effects on the population. I have no doubt that severe and moderate cases will pass the threshold, but they really form the minor group.

Mr J. B. Nixon: My second question has to do with page 5 of your brief. Talking about the guaranteed provision of rehabilitation, you state that the draft regulations of the bill provide that rehabilitation should continue while someone is in mediation or arbitration in the midst of the alternative dispute resolution. You suggest that

this provision should be expanded to include all aspects of rehabilitation that are recommended by a registered health care practitioner. I would have thought they are one and the same thing. What is the difference between the two situations that you are talking about?

Dr Corey: The draft regulations clearly specify the types of rehabilitation that are to be carried on while the ADR system is in process.

Mr J. B. Nixon: Can you give me an example?

Dr Corey: Dental, ambulance services. There is no doubt they should be carried on despite a dispute, but it clearly excludes all other forms of rehabilitation, chronic pain management, cognitive management for head injuries. These are not medical processes, nor are the dental. So the bill really excludes a large amount of rehabilitation from continuing if there is a dispute.

If there is a dispute, the onus needs to be placed on the insurance company to very quickly speed along the ADR process, to make sure that the issue is resolved quickly. If the shoe is on the other foot and the person is seeking to obtain services, I am concerned that the ADR process can gradually be lengthened out so that we end up with many months intervening between the need for service and the time that it is actually delivered. If it is too late, it is no better than no rehabilitation at all.

Mr J. B. Nixon: It is my understanding that there are time limits imposed on the mediation and arbitration process to ensure that it is speedy. But none the less, I do not think that really answers your point. I hear your point. Rehabilitation works best when it happens quickly, and that there is a much broader aspect to rehabilitation.

1620

Dr Corey: Can I comment? The time limits are still unspecified.

Mr J. B. Nixon: Okay.

Dr Corey: But within each time limit, there is a provision for the parties to extend the time limits, plus there are a number of steps. When you start adding it all up, it could be six months.

Ms Oddie Munro: I accept that the timeliness of the rehab is important and, in fact, even your suggestion that it would decrease the cost of claims. The instant claim is an interesting one. I am just wondering if you could let me know: first of all, the kind of health care professionals that you are working with in your clinic; whether or not when you talk about the recommendation on page 5, the registered health care practitioner would be speaking for the team, and third, in

your experience, can you give me some examples of unnecessary disability? Is that because over long periods of time you get a more complex presenting pattern?

Dr Corey: Yes. I can give you an example. In chronic pain, we have done some studies now with the Workers' Compensation Board which show that if we compare treating people three years after an injury for chronic pain with three to six months after an injury, the incidence of full recovery is much greater with the earlier intervention. The cost is lower, etc. It is not unusual in the current system, for people to be sent to the clinic three years and more, after an automobile injury for treatment and it is really too late to do very much for that person. Timeliness is really crucial. Early intervention is necessary.

To your first question, I do not really understand your—

Ms Oddie Munro: The mix of people, of professional health care givers. I am just looking at all aspects of rehab that are recommended by a registered health care practitioner. Would this not be one of the factors that you would be looking at in the mediation or arbitration? Do you think you would be referring to that process any questions relating to the kind of rehab that you were recommending for the client?

Mr J. B. Nixon: In other words, mediating the medical decision.

Dr Corey: I am thinking of an instance where a physician says such and such is required and the insurance company or the insurance company's physician says, "No, it is not." Then we end up in an ADR system, and what I am suggesting is that we should err on the side of allowing the family, the individual's treating physician, to make some decisions about what kind of treatment is needed. If there is a dispute about it, then let that dispute carry on while the treatment is under way and at least put the onus on the insurance carrier to make sure that the dispute gets resolved quickly. There is a provision in the draft regulations that if there is a fraudulent misrepresentation that the insurance carrier can recover its cost.

Ms Oddie Munro: So the dispute is more likely to be in relationship with allowing the claim by the insurance company as opposed to the opinion that came out of the team as to the kind of rehab that was suggested. Is that right?

Dr Corey: Yes. That is the most likely dispute that we encounter.

Mr Runciman: Very briefly, I just want to say that the witness that we have is from a long list of

people in the rehab field appearing before us, and I think that you are the first one who has been generally supportive of the legislation.

Mr J. B. Nixon: No, not true.

Mr Runciman: My recollection is certainly that the vast majority of the witnesses appearing before us have not been supportive of the legislation at all. I am just wondering if you might explain that and perhaps advise us why we should give more weight to your testimony than the others.

Dr Corey: My impression in talking to my rehabilitation colleagues is that they are supportive of major parts of the legislation but disagree with some of the same aspects that I have raised: the lack of a cost-of-living provision, the threshold definition itself. All I said was that if the bill stayed as it was, from a strict rehabilitation perspective, I think that it would be an improvement from the current system. The current system is really very bad, so it does not say a lot. If that consists of support—

Mr Runciman: You are talking about the no-fault part of it.

Dr Corey: I am talking about the no-fault and the way the tort system operates.

Mr Runciman: We all agree with that.

Dr Corey: Fair enough. It would be an improvement from what is happening currently. I can compare for you with the WCB system which, for all of its difficulties and publicity, is even better than the tort system, in my opinion, in providing rehabilitation.

The Chair: Thank you, Dr Corey, for your presentation.

We have Jeffrey Poirier next. Do you want to come forward, sir? The clerk has distributed a copy of your presentation. You have 15 minutes to go through it. If you could leave some time for some questions and comments and discussion, we would appreciate it. Please proceed.

JEFFREY POIRIER

Mr Poirier: I am new at this, so you will have to bear with me.

The Chair: Just take your time, feel at ease.

Mr Poirier: Since sending my request to speak to the clerk of the committee, I have completed extensive testing with Dr Guy Proulx, at the Baycrest Hospital, who is a leading neuropsychologist in Canada and an expert on acquired head injuries.

Dr Proulx has informed me that I scored high in many areas. I have difficulty, however, in

the areas of attention span, concentration and memory. The test results confirm my sense of my own disability. I expect that you will watch me and listen to me with some sense of disbelief that I have a head injury at all.

Dr Proulx has informed me that I have, relatively speaking, a mild head injury. He has acknowledged, however, that the head injury that I have is having dramatic consequences as far as my life is concerned. I can tell you, for example, that my electronics repair business has suffered dramatically and that I have lost over \$40,000 since the accident on 9 February 1987, when I acquired my head injury.

Dr Proulx has explained to me that there may also be some emotional factors which are contributing to my difficulties with concentration and attention. He is wondering whether the frustration I am experiencing as a result of my disability is adding to my problems. I believe that my injury illustrates one of the major problems caused by the wording of the threshold in the proposed legislation. I am certain I would fail the threshold test.

There is no way to prove conclusively that my injury is physical. Even Dr Proulx, one of the leading neuropsychologists in Canada, has to concede that it is difficult to sort out what part of my difficulties are physical and what part of my difficulties are emotional. It is entirely possible, if not probable therefore, that I would not meet the threshold because I would be unable to prove that my injuries are physical in nature.

Furthermore, because my head injury is mild from a relative point of view, I probably would not meet the threshold, even if I do prove that the injury is physical. I would fail the threshold test because I cannot prove that my head injury is a permanent serious injury, notwithstanding that it is an injury with dramatic consequences for me.

I might also have trouble meeting the threshold test because I cannot prove that I have an impairment of an important bodily function. Is the ability to concentrate an important bodily function? I have no idea what the answer is to that, but I do know that there is at least a possibility that I might fail the threshold test with my kind of injury.

I am here because I believe that this committee is the last chance for others who acquire head injuries like mine, who have the bad luck to acquire them after changes have been made to their insurance system. I am a living example of the sort of innocent victim whose life will be drastically affected by this threshold.

Because I am back at work I would not be entitled to receive the proposed no-fault benefits, but my financial losses are continuing and are probably permanent. I cannot function in my business to anywhere near the extent I used to and I am required to hire help to do work I used to do myself. My relationships have been affected and the quality of my life has been dramatically reduced.

Under the current system I will be fairly compensated for considerable financial losses and for the impairment of the quality of my life. Under the proposed system I will get nothing. The unfairness of this threshold to people with injuries like mine must be manifestly obvious, and I hope that in a society like ours and in a province as wealthy as Ontario, we will not turn our backs on people like me who need and deserve proper compensation.

Mr Runciman: When did your accident occur?

Mr Poirier: On 9 February 1987.

1630

Mr Runciman: In 1987. How long was the recuperative period for you?

Mr Poirier: It was about five months before I went back to work.

Mr Runciman: Did you immediately know that you were going to have any other problems?

Mr Poirier: No, not at all. When you are recuperating, lying on your back watching television, you do not really realize that you have a problem. It is not until I went to work that I started to realize that I had problems in concentration and I cannot remember very many things. According to Dr Proulx, I have a problem with—I guess to compare it to computers, you could say I have a problem with my address register. The memory goes in, but my brain cannot find the location to retrieve it again later. It is one of those things where you know the name of somebody, but it does not come to mind. This is what happens to me all the time.

Mr Runciman: So it was six or seven months after the accident before you recognized that you had a problem?

Mr Poirier: No, it was not so simple. I was noticing the problems I had with the inability to concentrate and I was having memory problems. I was easily distracted and then would find it very difficult to get back on track again. My temper is extremely quick now compared with before. I have offended many customers, and my business is a service business.

It was these things that kept adding up and I was wondering what was wrong with me, so I went to see a psychologist and he told me that anybody who comes close to dying in an accident usually goes through this type of trauma. He figured I should give it a year. So I went back a year later because nothing changed, and he did not have any ideas whatsoever. He was—

Mr Runciman: This was over a year and a half from the date of the accident?

Mr Poirier: That is right. He did not have any answers for me. I went eight or nine months and I finally read an article in the local newspaper written by a local reporter on a seminar given by Dr Franks on head injuries. This column was about six inches long, four columns wide, and throughout were all my symptoms. I phoned the Ontario Head Injury Association, and just finding out what was wrong with me was really a relief.

Mr Runciman: So you are now involved in litigation? What is happening there?

Mr Poirier: Yes. The accident happened when a tractor-trailer was exiting Highway 7 to go on Highway 400 southbound. I was in the guard-rail lane and a 40-foot container with 30,000 pounds came off it and landed on my car. He was on the ramp; he was not even on the highway. The officer who looked after the accident was on the ball and he found ice and snow in the holes where the pins go on the container. The container was not fastened on, and there is no doubt as to fault.

Mr Runciman: Your case is still in the system then?

Mr Poirier: Yes. I am still trying to get help and trying to—

Mr Runciman: But you are appearing before us even though there have been some delays obviously with respect to determining your own condition, but also in the court system. But you are still quite pleased that you have that opportunity, that access to the courts so that you can hopefully, ultimately—

Mr Poirier: It is very frustrating because it does affect every part of your life in a weird, funny sort of way.

Mr Runciman: I appreciate your appearance here. Thank you.

Mr J. B. Nixon: Thank you very much for appearing before us today. I would just like to follow up on a couple of questions that Mr Runciman had. I understand you have com-

menced a lawsuit and it appears that there is no doubt as to who is at fault.

Mr Poirier: No.

Mr J. B. Nixon: When did you commence that lawsuit?

Mr Poirier: It was just within a month or two of it being the legal limit. I believe you have two years from the time of an accident.

Mr J. B. Nixon: You have two years. Have you had examination for discovery yet?

Mr Poirier: Yes. If I know what you are talking about, I have been through two or three tests.

Mr J. B. Nixon: Have they set a trial date?

Mr Poirier: I do not believe it is that far.

Mr J. B. Nixon: They have not set a trial date. Have you received any no-fault benefits that you are aware of?

Mr Poirier: Yes, but that was only during the first four or five months I was recuperating at home. I did not work. Once I went back to work—I am still not productive but I have somewhere to go any way. I do not believe I could hold down a job in my field working for somebody else. It is just because I am in it on my own. I do not make much money. Let's put it that way.

Mr J. B. Nixon: When did you first start receiving some sort of rehabilitation therapy?

Mr Poirier: I just found out about my head injury last Christmas, so it would be just over a year that I have been getting help.

Mr J. B. Nixon: Who do you get help from?

Mr Poirier: The local head injury association, the Barrie head association.

Mr J. B. Nixon: Do you visit a doctor?

Mr Poirier: No. It is such a new phenomenon. I do not believe we had the technology to keep people alive 10 years ago. The head injuries were not apparent and now they are, so there are one, two or three people helping thousands. I am in the works like everybody else and I have to wait my turn.

Mr Philip: Did I understand you correctly to suggest that one of the reasons why this is not before the courts earlier is that in fact you did not know there was anything really permanently wrong with you, that the advice of the psychologist you went to was that it was only a temporary thing, and it was only after meeting with the head injury association and doing some further studies on your own that you concluded that you had

what we would call a permanent disability of some sort?

Mr Poirier: No, actually the psychologist told me that my depression and my lack of memory were caused because I was distracted by the fact that my business was not making a lot of money and the fact that my girlfriend of many years and I were not together and the fact that I am still living at home. I moved back home to recuperate after the accident and I am still living at home with my parents.

He had every reason in the book, by the way. I argued with him on every count because I had gone through many of these same situations like splitting up with a spouse before. This was my second time around, so to speak, and I did not believe anything he said. I am not a depressive person. All the things that are happening to me are new to me.

Mr Philip: Am I correct, though, in saying that the court delays were in part because you did not receive the right diagnosis?

Mr Poirier: Yes. I think it was all just taking its own course with the healing process. It was more or less like—I sustained other injuries as well, broken ribs, etc. I think it was just a normal course that the lawsuit took so long.

Mr Philip: Under this legislation, do you feel you would have difficulty or have to get into an adversarial effect or process in proving that you have a permanent disability of some sort?

Mr Poirier: Without a doubt.

Mr Philip: And you are very much afraid then that you would not receive adequate compensation under this legislation?

Mr Poirier: None at all.

Mr Kormos: Very quickly, there has been a whole lot said about supposedly speeding up the process. When Mr Nixon over there asked you about delays in the court system, that means the Attorney General (Mr Scott) should get off his duff and start resolving some of those. The fact is that your situation seems like one where the insurance company would have loved to have settled it right away because then you would not have been aware of the real extent of your injuries and you would have been out of luck. You really would have been without any real compensation, if indeed you had succumbed to some temptation to resolve it right away. In your case, waiting and assessing the extent of the damage will in the long run prove beneficial to you, will it not?

Mr Poirier: I would agree with that. I am sure that whatever is wrong is wrong.

The Chair: I thank you very much for your presentation.

Mr MacDonald: it was in the brown envelope this morning. It is exhibit item 113. It is entitled *The High Cost of a Bump on the Head*. If you cannot find it, I believe the clerk has a few extra copies.

1640

C. DOUGLAS MACDONALD

Mr MacDonald: My name is Doug MacDonald. Thank you for giving me the opportunity to speak to you today as a concerned citizen.

I was born in Ontario, so I have a vested interest in Ontario. It is more than pride to say that I have always been proud of the ways of Ontario. It should be clear then to you that I would wish to avoid anything that would cause me to be ashamed of life here in Ontario, which brings me to Bill 68. I believe this new auto insurance legislation is ill advised, repressive and based on poor logic. I have included an appendix for your information.

As a result of a single-vehicle accident in the state of Michigan in 1981, I am the father of a mute, quadriplegic daughter, now living at home with us. My daughter is now a ward of the official guardian of Ontario. I am her next friend in law and, in effect, I am responsible to the Supreme Court of Ontario, through the Ministry of the Attorney General of this province, for all aspects of my daughter's care.

Close to nine years of personal experience tells me that there is a sad lack of professional competence in the decision-making area, especially when they are under pressure. By far the biggest obstacle to my daughter that she has encountered has been the lack of understanding by ill-informed professionals, in particular, and underinformed members of the public, in general. However, I prefer to be constructive today. I wish to offer some comments as a concerned citizen, with respect, to the minister.

Many observers applaud your government's courage in approaching insurance reform, myself included. However, insurance reform comes too late for my daughter, Lynne, and me. Lawyers, civil servants and insurance carriers are a fact of life for the MacDonald family as long as we live. We are like Siamese triplets, if you imagine such a thing.

Insurance reform will vitally affect my son, soon to enter the vehicle driving force—he is 17—and my grandson, now learning to walk.

Insurance protection must be made mandatory for all. The protection must be real, not a slickly packaged lifestyle product.

Many of us watching the progress of these hearings are in grinding despair lest true reform become diluted in partisanship. Our emotion is real and unfeigned. Please consider implementing insurance reform through a more complete consultative process to include information received through your Premier's Council.

Insurance product delivery is a product which needs reform. There is a clearly perceived dichotomy between the advertised insurance-selling aspect and the delivery of insurance-coverage aspect of the industry. I believe marketing seldom meets claims. My own experience indicates that delivery of benefits by the insurer involves much delay due to calls by the insurer for repeated consultation and repeated documentation. Such delays often border on the criminal when it retards rehabilitative benefits of the restorative, re-entry sort. The process often boils down to who can afford the best hired gun in terms of reputable expert witnesses. I view this process as wasteful but sadly inescapable.

I do not favour restriction of the tort system, despite its many obvious faults and stresses. Neither do I admire the tort system. Resort to the courts was the only recourse we had to get the decision-making and delivery processes moving. To be even-handed, permit me to say that there is, in a similar way, less than full prior disclosure on the part of personal injury lawyers about time, processes and costs involved.

While mediation and arbitration can be legislated into existence, my experience has been that only judicial enforcement is effective. Insurance companies do not move until a judgement is in place.

Exemplary or model behaviour cannot be legislated. I urge the government to consider limits on lifestyle advertising in the insurance industry similar to those guidelines gradually developing at present in the alcohol and tobacco industries.

Truncation of the tort system is unwise. To do so will only be a make-work program for lawyers for five or 10 years while the dust settles, setting precedents and levelling the playing field.

I was horrified after sitting in the office of my own elected representative from Wilson Heights to have heard his characterization of insurers' methods collectively as being, in nature, Santa Claus-like in their love of large disbursements and beneficent in general. Nothing could be further from my personal truth.

My elected representative also indicated a view of the MacDonald v Travelers settlement, apparently having meaning to this government,

as defining an excess insurance response for multiple passengers in a vehicle. However, the essential meaning for the MacDonald family was that Lynne could live at home and that she not be held in an institution by virtue of disconnected, incomplete, or even the absence of, replies by the insurance carrier.

You have undoubtedly heard of bean counters. Insurers, in my biased opinion, are Kleenex counters, by demonstrating an obsession with the mundane and the minutiae while neglecting the essentials. My insurance carrier has failed to this very date to indicate clearly to me that the company has a rehabilitation component in the corporation; that it hires consultants in the marketplace as third parties, or that rehabilitation in any of its defined forms exists in its vocabulary. Kleenex costs were the first item for which my insurer refused reimbursement.

To be even-handed about this, there also exists in my files inconclusive correspondence with the Minister of Financial Institutions while he was in a previous portfolio on the topic of the existence or the absence of cognitive therapy, which means memory retraining, under the Ontario home care program. My question still exists after many months: Why must the victim or his representative be placed in the position of educating his own carrier and/or the health care secretariat?

Let any of you think this is bashing of legislators and insurers over a particular case, let me say with all due respect, through you, Mr Chairman, to the present Minister of Financial Institutions, you cannot afford to offend your knowledgeable supporters. The MacDonald case is all too typical.

This government was elected to govern. Governing so often involves making difficult choices in an informed and intelligent way. There is no free lunch or free ride. Adequate insurance coverage is a costly product. I have not heard any critics of Bill 68 suggest that insurance coverage be cost-free or irresponsible. I believe we are suggesting cost fairness. I fear in the absence of tort restraints, notwithstanding all the weaknesses of the tort system, a further growth of irresponsibility on many sides.

Please be aware, minister and members of this committee, that interpretation of insurance coverage delivery to the claimant is based on expert wordsmithing. Wordsmithing simply involves a lot of effort and trying to quantify the English language, which is very difficult to quantify because of its very nature. Insurers are inveterate wordsmiths. I suggest that the KISS principle be adopted for the language of this

legislation, the first principle being well known—to keep it simple.

For example, the use of the word “physical” in the threshold definition will generate a lot of dust-ups. I fear it will not permit the courts to admit into evidence results in interpretative or representational form, upon which much diagnosis is founded. Soft tissue injuries deserve equal consideration with other injuries.

For this reason, I support replacing “physical” with the word “objective” in the definitions of clauses 231a(1)(b) and 231a(3)(b). I further support the inclusion of “or” between “serious physical” in section 231a or in any other occurrence. The definition could be simplified simply by wording it: “injury which is the result of a motor vehicle accident.”

I further fear that too little attention is paid in this legislation to one of the leading causes of disability in this generation, namely stress. In my day we called stress “shock.” Remedies for mental, physical or emotional stress are worthy of equal attention with other injuries.

Providing funding described as rehabilitation yet capped by time or cost is a contradiction in terms. “Rehabilitation,” in its essential meaning, means to restore to former ability. Rehabilitation capped is rehabilitation denied. Rehabilitation, in fact, is too loosely defined, and poor standards of licensing of therapists and practitioners do exist.

1650

It was deplorable and biased in the extreme for an insurance spokesperson purporting to be impartial to testify before you that “to change one word of the definition is to escalate the cost.” To those of us living within the experience and living with the results of a brain injury, this is indicative of a widespread attitude which is so prevalent in many powerful circles, that the disabled can and should live with second-rate solutions. With respect minister, do you really think that the compassionate inclusion of non-physical injuries would be a Cadillac plan?

No apparent attention was paid to reforming the inequities and inefficiencies of the present system which, if rectified, would, without doubt, result in substantial savings. Adequate insurance benefits come with a cost, and that cost is attached and it must be shared. The issue before you is inescapably an emotional one, a choice between dollar cost or service to people.

I will move to point 22. Much has been said about the size of payouts to claimants expressed in terms of millions of dollars, particularly to the description which often uses the *McErlean v The*

City of Brampton and MacDonald v Travelers as examples. It remains a truism in the information dissemination business that one can never truly set the record straight. Nevertheless, I wish to point out to the committee respectfully that the *McErlean* case was lost on appeal, despite what many observers feel were the legal merits of that case, and that the *MacDonald v Travelers* judgement, in the absence of appeal by either side, was, for costs, limited to home care as incurred.

Description of settlements expressing dollar amounts in the millions of dollars are matters of interpretation, extrapolation and prophecy and should not be legislated. Notice it is typical of the insurance industry habit that concentrated effort, requiring substantial funding, is being given to dispelling other myths rather than these.

It is appropriate to point out the contrast between the interpretation put out concerning the *MacDonald* settlement as relating to matters of excess insurance, whereas a family spokesperson—myself—related the settlement terms to matters of human rights such as living at home. I was correctly quoted in 1987 when I said, “The most important thing about the judgement to us is that Lynne won’t be forced back to the hospital by default because she can’t meet her expenses.” I commend to you the contents of the presentation of Mr Pileggi, a previous witness, who pointed out a similar viewpoint.

I would like to provide you with some figures that are difficult to obtain. The present care cost is listed for your information. I will not take time to read it. Care costs are for the Metropolitan Toronto area, where my daughter lives. My daughter’s cognitive therapy program costs approximately \$2,000 per month. The total care cost may be estimated at \$20,000 per month, not including medical and equipment costs such as computerized communication equipment. How does this compare to the \$1,500-a-month limit on rehabilitation costs?

My recommendations follow. May I read them into the record?

The Chair: Please.

Mr MacDonald: I respectfully recommend to the committee that you:

1. Focus insurance reform on service to people. The present focus on dollars over people is unworthy of the governing party.
2. Remove the word “incur” wherever it may occur.
3. Index the benefits to the cost of living index.
4. Include clear language to describe women

and children under 16 as full persons protected by law.

5. Remove language which is discriminatory.

6. Require a structured settlement to appear on insurers' accounting books as a liability for a single time, once only, by removing what is known as the contingent liability clause from tax law, where it can be claimed twice and therefore inflate liability artificially.

7. Focus the reimbursement language upon people as users of the road.

8. More clearly define the term "rehabilitation" in the legislation to include aspects of meaning to encompass restoration, recovery and re-entry into the social fabric of society, beyond mere vocational placement. This is important, but not solely important.

9. Actively support in this province the development of more practising physiatrists. Do not confuse that with psychiatrists. I mean specialists in physical medicine and their supporting health care professionals.

10. Insist on absolute clarity in information that is provided to the public about the cost of fair coverage and the cost of benefits for people.

11. Require a more clear public revelation of regularly audited statistics and a less panic prone consultative process by willing participants.

12. Last, are the people being heard? The present line of time constraints is of concern to this witness as I am familiar with a number of citizens for whom the application process was intimidating and whose voices therefore remain unheard.

Mr Philip: I think your brief brings out a number of interesting points and I thank you for it, but one of the things that comes out about your own case is that basically it helps to destroy what is really a myth in Canada—is it not?—that people are getting huge profits out of having an accident. You did not get a large profit. You barely have enough, maybe not even enough to deal with the problems of your daughter.

My question is this: from your experience with the head injury association, which I have had an opportunity to meet with on a number of occasions, would you say that in Canada people are not getting rich, that they are not getting large settlements, that this is an American phenomenon or maybe some phenomenon in some other countries, but that people do not make a lot of money out of the unfortunate incident of an accident?

Mr MacDonald: Yes, I would say that. Not only do we not make a lot of money; we are not often consulted.

Mr Kormos: Very briefly, I have to tell you, Mr MacDonald, that it is not good news. You might as well take it back to your community and tell your neighbours and friends and the people involved with you in the head injury association that yesterday up in Sudbury, in response to a question from Mr Runciman, the government stated quite clearly that the tort reform quality of this, the elimination of tort rights, was not going to be changed regardless of what the committee said and regardless of what evidence was presented to the committee.

That is sad because what that means is what we have suspected, that the government is using this committee process for a sham to give an illusion, nothing but an illusion of democracy. The government made up its mind that it was following the dictates of the insurance industry, and no matter how hard Mr Runciman tries or I try, or Mr Philip, or more importantly you and those other people who have made excellent submissions criticizing this legislation, this government is single-minded in ensuring that the insurance industry makes big profits and that victims get victimized twice, once by the drunk driver and second by the insurance industry.

Mr J. B. Nixon: Thank you very much for appearing. If you believed what Mr Kormos said to you, I do not think you would have bothered to appear. I appreciate your appearing and I appreciate the information and the advice you have provided to us. In particular, I appreciated the itemization you have given us of the various costs associated with your daughter's particular case in terms of the needs for long-term care.

Yesterday in Sudbury we had before us a lawyer, Frank Mantello, who cited the MacDonald v Travelers case to us and asked us to consider the various findings by the court in that case, in particular the costs of long-term care associated with the decision in that case. I can tell you I am very glad you came, but I want you to know that other people have seized on that case as an important decision setting important standards for long-term care.

I have a particular question, and that is, in your daughter's case is this going to be a permanent situation or is medical science able to tell you that?

Mr MacDonald: There are two theories about memory restoration. One is replacement and the other is repair. We are not sure which is working in my daughter's case. There are experts who say that to retrain a memory would take about 50 times longer than a normal person would take to learn something. I believe it is Dr Rodger

Lloyd-Wood who said that. So it is a long-term process.

1700

Mr J. B. Nixon: And there is no ability to say at this point whether it is rehabilitatable, if there is such a word.

Mr MacDonald: We have entered a two-year trial agreement with the insurance carrier to view the Michigan model of consultation, of searching for rehabilitation factors such as moving water therapy for seized limbs and so forth, so there is some hope.

Mr J. B. Nixon: I take it this was a case that certainly exceeded the Michigan threshold, because there was a lawsuit involved.

Mr MacDonald: It took some time for the legal minds to agree on who should respond.

Mr J. B. Nixon: It is between which named defendant, is a problem you would find in any court case, unfortunately, as I understand it.

Mr MacDonald: It depends on whom the insurance is attached to. In Michigan, because their system is fundamentally different from ours, insurance is attached to people whereas in Ontario it goes by the vehicle.

Ms Oddie Munro: I would like to say that I think your frustration, and yet the hope you will have—listeners in this committee—is very evident and I think we are all listening. As amateurs, I think that in many ways we still, all of us, have a different background that allows us to feel and to be able to sometimes ask questions that are pertinent and relevant.

If it makes you feel any better, a lot of the recommendations that you have come up with are in fact the threads that have been presented by other people. Since obviously we are being televised, this is also a prime way of educating people and communicating what pain, injury and trauma are all about. I suppose I only have an observation. I really would like to think that your ability to come in here and share with us your frustration has got to have an effect. I would not think you would find anyone around the table who is not trying to do his best.

Mr MacDonald: That is encouraging.

Ms Oddie Munro: I do not have a question. That is my only observation.

Mr Runciman: I hope what Ms Oddie Munro is saying is correct, although I was somewhat disillusioned in Sudbury with the comments she was making there. In support of what Mr Kormos said, indeed the parliamentary assistant said, based on a direct question from me on the tort

system, that there no consideration was going to be given by the government to retaining the tort system as we know it.

I guess my frustration, as you quite correctly point out in your submission, sir, is that the issue is inescapably an emotional one. I know I have become emotionally involved in this issue in listening to testimony like yours, as has Mr Kormos. Perhaps we have both been somewhat criticized for that; Mr Kormos more than I.

I know obviously that you were here because of a very sincere interest because of your own personal situation. I think I have seen you sitting in the audience here on a number of occasions. I appreciate your being here and it is your testimony that I hope—I expressed this hope early on—will have an impact on government members, because there are only four of us on the opposition side and we require at least three warm bodies over there to have the courage. I grant you it takes a great deal of political courage to take a position in opposition to that of your Premier.

We will hold out hope that we will see meaningful changes occur. You have mentioned the question of haste. I want to share that concern with you as well. Again, your revelations with respect to your dealings with the insurance industry have been most interesting. I know we cannot tar all the folks in the business with the same brush. I am sure there are some good actors there as well, but I think it is interesting that the government's haste in dealing with this legislation is primarily because of concerns expressed by the industry.

The fact is that the minister wanted to get this on the books before Christmas and now hopes to be in a position to provide specific details to the industry by 1 March, prior to this bill even being dealt with by the Legislature. That is the way the government wants to deal with this. I express and reiterate your concern as well, that this is such a significant piece of legislation and impacts Ontarians in such a significant way that more widespread consultation is required before a final decision of this magnitude is taken. Thanks once again for appearing.

The Chair: Thank you for your presentation. For Mr Runciman's math, you only need two warm bodies. You have four and if you had three, that would be seven to three on the other side, so your hopes are—I am always the eternal optimist.

To Mr MacDonald, a question around your last recommendation. Perhaps you could expand on the application process being intimidating. Do you have any suggestions to make it less

intimidating. If you would care to expand on it now or in writing to the committee through the clerk, I would appreciate hearing that.

Mr MacDonald: In general, sufferers of head injury find it difficult to initiate and make decisions. I know there are some groups that would have liked, or have been able to accommodate more leisurely preparation time and could have made meaningful presentations to you. I am referring to groups.

The Chair: Okay. I am a little lost in terms of what you are—are you talking about individuals feeling they have to have a written submission versus coming in and just telling a story or entertaining comments and discussions, or could you give me—I think you make a very serious accusation when you talk about the objectionable time constraints, as well as that the application process was intimidating.

As a chairman, I need to know, if you would expand on that, so that if there is something that is intimidating in the process we can make it less so. If you want to give it some thought and get back to the clerk, I would appreciate hearing your thoughts on that.

Mr MacDonald: Yes, I could do that.

The Chair: Thank you. We have two matters to deal with. The clerk distributed the fact that there were some problems in the control tower. They should be cleared up by eight o'clock, but he provided you with a telephone number you should call before you get out to the airport for the 8:30 flight.

We have had a request from the justice committee for this room. They need it for translation purposes on 14 February in the afternoon. At that time we will be into clause-by-clause. I am at your discretion whether we are able to allow that to happen. If you want to give it some thought and we can deal with it at a later time, that is no problem either.

Mr Kormos: I think I will be in the justice committee that day.

Mr Philip: Clause-by-clause does not concern me.

The Chair: If there is no problem then, why do we not indicate to the justice committee that it can have it on 14 February in the afternoon. The committee stands adjourned until nine o'clock tomorrow morning in Thunder Bay.

The committee adjourned, at 1709.

CONTENTS

Tuesday 23 January 1990

Insurance Statute Law Amendment Act, 1989	G-499
Provincial Building and Construction Trades Council of Ontario	G-499
Electrical Workers Construction Council of Ontario	G-499
Ontario Pipe Trades Council; International Union of Operating Engineers, Local 793	G-499
Labourers' Provincial District Council of Ontario	G-499
United Senior Citizens of Ontario	G-503
The Downtown Clinic	G-508
Afternoon sitting	G-515
Halton County Law Association	G-515
Driving School Association of Ontario Inc	G-521
Cheshire Homes Foundation	G-526
Associative Rehabilitation	G-532
Behavioural Health Clinic	G-536
Jeffrey Poirier	G-540
C. Douglas MacDonald	G-543
Adjournment	G-548

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From the Behavioural Health Clinic:

Corey, Dr David

Individual Presentations:

Poirier, Jeffrey

MacDonald, C. Douglas



No. G-11 1990

Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on General Government

Insurance Statute Law Amendment Act, 1989



Second Session, 34th Parliament

Wednesday 24 January 1990

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

CONTENTS

Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Wednesday 24 January 1990

The committee met at 0905 in Scandia Room II, Valhalla Inn, Thunder Bay, Ontario.

INSURANCE STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

The Chair: I am going to recognize a quorum. Boy, do we ever have a good public address system today. Is anyone here from the Lakehead University Student Union? They were to be here at nine o'clock. I do not see anyone here.

The Thunder Bay Law Association is here, so I am going to ask Mr Shaw, the president, and Mr Demeo if they would like to come forward. We will just flip times should the Lakehead University Student Union come. Your presentation has been circulated to the committee members. We have half an hour. If you could break it out between 15 minutes for presentation and allow 15 minutes for some comments, questions and discussions, we would appreciate that. Welcome to the committee. The next half hour is yours. Perhaps you could just identify yourself for Hansard and we will go from there.

THUNDER BAY LAW ASSOCIATION

Mr Shaw: My name is Doug Shaw. I am the president of the Thunder Bay Law Association. My colleague, Alex Demeo, is a director of the Thunder Bay Law Association.

Succinctly put, the position of the association is that it is strongly opposed to the draft legislation. It is our position as an association that it is inherently unfair, unjust and offensive to deprive innocent victims of motor vehicle accidents of the right to fair and adequate compensation for personal injury losses, which would include of course pain and suffering, actual economic loss and losses related to injuries to family members.

We have circulated among a petition our clients, which I have before me and which I understand was not properly presented to this committee. We will be presenting this petition to the Legislature through our elected member, Lyn McLeod, but this petition contains the names of hundreds upon hundreds of our clients who have

reviewed the legislation with us and who are in opposition to this plan.

The association has set up a committee which has been studying the proposed legislation. My friend Mr Demeo is a member of that committee and the author of the brief that is before you. I would like to turn the microphone over to him to take you through the brief, and then I will be available to answer questions you may have.

Mr Demeo: In 1987, some time after the Osborne commission released its report, the Insurance Bureau of Canada came up with a proposed no-fault scheme. They circulated pamphlets for it in the local supermarket; I remember picking one up. They were calling this scheme the smart no-fault plan and touting it as their solution to the insurance crisis they perceived. The smart no-fault plan was a threshold system like the one contained in Bill 68, but not as onerous.

The threshold there requires a permanent, serious disability. The plan provided for wage replacement of up to 90 per cent of a person's income or \$600 per week. It also indexed these wage replacement payments to inflation. Finally, one other feature of the plan was that notwithstanding the threshold, it allowed an injured party to claim from whomever caused the injury his full wage and economic loss. If that plan was styled as the smart no-fault plan, I can only suggest that the plan suggested in Bill 68 might be called the dumb no-fault plan.

In Bill 68 a person is not entitled to recover his full wage loss. They are only going to be entitled to recover 80 per cent of their wage loss up to a maximum of \$450 per week. That will take a family of four in Toronto up to the poverty line. The plan also, for whatever reason, provides that the first week an injured person is off work is free. You are not entitled to have your income replaced for the first week. There is no inflation protection in Bill 68. As the years pass by and inflation erodes the purchasing power of the benefits available under the plan, the family that is already at the poverty line on \$450 a week is only going to fall farther behind.

Finally, the threshold suggested by Bill 68, "permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature," is perhaps the

highest and most onerous threshold that has been proposed in North America, outside of Quebec. The only way you can pass that threshold is if you are a quadriplegic or perhaps if you are dead.

The government, in introducing this no-fault plan, coupled it with a number of very laudable initiatives. I am referring to the summary provided by the Ministry of Financial Institutions. It is attached as an appendix to my brief. It is entitled the Ontario motorist protection plan.

There are many initiatives in that plan for which the government is to be commended, including ones relating to accident prevention. They are talking about increased police enforcement, increased sanctions for poor drivers, an increased education campaign throughout the province to improve everyone's driving habits. They are talking about highway improvements, a greater traffic management system and education campaigns in the workplace emphasizing traffic safety.

In that information bulletin itself the government, in support of this plan, indicates that these initiatives will help bring about a reduction in the number and severity of accidents. The brochure goes on to say that such a reduction is the only real way to bring the cost of insurance into line.

The program also speaks of improving the judicial process, reforming the courts and making things easier for people to collect their money. They talk about delays in the litigation process. I would just like to point out to the committee that well over 90 per cent of any personal injury cases are settled without ever seeing the courtroom door. Any delays that result in the process are not really from the courts or from the litigation, but from the fact that it takes injured people time to recover from their disabilities and injuries. Once they have recovered, settlement of a claim usually follows quickly thereafter.

The threshold wording, which I have already mentioned to the committee, is something in itself that might delay the resolution of many claims. It is going to take years of court action and court cases to figure out exactly what the permanent serious disability and continuing impairment of an important bodily function is. The wording of the threshold may defeat the intended purpose of the plan, and it is my respectful suggestion that the threshold wording be reworked and perhaps put into English so that anyone on the street can understand it without getting a lawyer involved to interpret it for him.

Michigan has had a threshold system since 1974. Their wording is similar but not as onerous

as that contained in Bill 68. Michigan is still litigating that threshold to this day, and that is 16 years later.

The local law association met with members of the Minnesota bar just last night and we have had some discussion of their system. In Minnesota they went to no-fault in the later 1970s. In the Minnesota plan, when they did go no-fault—it was not nearly as severe a system as this one—rates went down 25 per cent. The Minnesota bar conceded that they went down 25 per cent for one reason, and that is because the government mandated it in exchange for having a no-fault plan. Ever since then, the rates have continued to go up in their no-fault plan. There is no perceived saving from instituting no-fault besides the fact that the government stepped in and mandated a discount just as this government once stepped in and put a cap on rate increases.

There is no rush for the government to institute this plan. It is the suggestion of the Thunder Bay Law Association that you first look carefully at the effect of the proposed accident prevention scheme and what that would do on the accident rates and how that would influence insurance premiums downwards.

It is also suggested that the government sit back and take a look at the approximately \$150 million annually that will be recouped by the insurance industry as a result of not having to pay OHIP, not having to pay workers' compensation and not having to pay the three per cent tax on premiums, that it take a look at this saving and tell us how that will influence premium increases.

The commissions put together by the government to study the insurance system in Ontario, Kruger and Osborne, have both come out saying that Ontario has the best system on the continent, that Ontario should export its system rather than import something from US jurisdictions. The US jurisdictions in the 1970s had a total of 16 states go no-fault. Two of those states have since rescinded their no-fault legislation because it just did not work and there is no appreciable premium savings noted over the years in those jurisdictions that have maintained no-fault.

The Kruger and Osborne commissions have both indicated that the only way a no-fault system will have any effect on premiums is by reducing the rights and the recovery of innocent people hurt in accidents. The only people who will benefit from the proposed scheme in Bill 68 are those people who cause accidents. The people who are hurt in those accidents, men, women and children, are going to lose out under the system.

It is the submission of the Thunder Bay Law Association that this type of tradeoff is unacceptable and we strongly recommend to this committee that it take this back to the Legislature and redraft the legislation so that innocent people are not penalized.

Those are my submissions.

The Chair: I have Mr Pouliot, Mr Kormos, Mr Nixon and Ms Munro, up to five minutes. Mr Pouliot.

Mr Kormos: I want to thank—

The Chair: Mr Kormos.

Mr Kormos: We are capable of deciding the order of our comments, Mr Chairman.

I want to thank you for coming—

The Chair: For the record I had recognized Mr Pouliot so it is up to you how you want to—

Mr Kormos: Okay. I hope you recognized me, too.

The Chair: I did.

Mr Callahan: Did you have breakfast this morning, Peter, or what?

Mr Kormos: In any event, I am sure we spend enough time with each other on this committee.

I want to thank you for coming out. The legal profession has been under some special pressure in particular because they have been used as the scapegoat, as the diversion by the government for this whole scheme. So much of the thrust of the sophistry has been: "Well, it's those nasty lawyers that are mucking up the works and if we can only get them out of the system, things will be just fine. The way to do that is with this no-fault scheme."

No-fault is the biggest misnomer we could ever generate because there is nothing new about no-fault in this province. We have had it for over a decade. What is new here is that the vast majority of injured people, not just minor injuries but seriously injured people, are going to be denied access to compensation for pain and suffering.

0920

The packaging is incredible because it talks about the new Ontario motorist protection plan as if to imply that there was an old one. What this is is a new scheme to generate incredible profits for the auto insurance industry. What Karl Malden is to American Express, the Liberals are to auto insurance in Ontario. The insurance industry has finally found the ultimate celebrity spokesman, the ultimate Vanna White, to promote an enterprise that is going to earn them profits they never even dared dream of.

What is incredible though is the dishonesty that is inherent in all of this; that is to say, there is an impression that is being generated, a myth that somehow this is designed so that people can be treated more fairly, so that more money can be distributed to victims. Come on. That is the line that is being spread around by the insurance industry with the help of this government. It is simply not true.

This bill is going to create the most highly subsidized insurance system in the western world, as the taxpayers' dollars are going to be subsidizing the private insurance industry. What the insurance industry has managed to do is reverse the whole scenario. They have the public insuring the insurance industry now instead of the insurance industry insuring the public.

The insurance industry in this province has been a smug, sacred cow and for too long has been steadily delivering a line of sacred bull. They have their own interests in mind. They are prepared to go to any lengths to achieve those goals, even if it means denigrating members of the legal profession whose motives are but to ensure that people are treated fairly and whose motives have been there for a long time, and even if it means spending big money on the government, like over \$100,000 in donations in the last general election; interestingly, donations to people like Carman McClelland on this committee, to Brad Nixon, to Lily Oddie Munro, who have been the beneficiaries of really interesting largesse from the auto insurance industry.

I have to tell you that we New Democrats get money from the labour unions and I can tell you that I am proud to be promoting the interests of working people. I do not think these people can claim to be so proud to be promoting the interests of the private insurance industry.

Mr Pouliot: Welcome to Thunder Bay, members of the committee and people who are paying us the first compliment of their timely visit.

I have some questions, Mr Demeo. In your presentation, you made mention of threshold and of income replacement. I want to bring forward and maybe I can share this with you; you are a member of the law profession. Maria cleans the room here at the Valhalla Inn. It could be any place in Thunder Bay. She is a first generation Canadian of Italian descent. She makes \$5 an hour, the minimum wage. What this legislation proposes is that under the income replacement she would get 80 per cent with no indexation, notwithstanding the likelihood that the cost of

living will increase as it has almost every year for decades.

Would I be right in assuming this: at \$5 an hour, which means 40 hours at a designated working place, constituting a workweek, Maria would gross \$200 a week, but on the way to work one day she gets run over. Now she gets 80 per cent of \$200 a week, right?

Mr Demeo: Under the proposed plan, you are suggesting?

Mr Pouliot: That is right. Is that your understanding of the legislation? You have made mention of the threshold and the income replacement.

Mr Demeo: As long as she can establish the disability to satisfy the insurers.

Mr Pouliot: She will get 80 per cent. In other words, she would no longer get the minimum wage. Do you acquiesce? Do you agree with this?

The Chair: Just a point of clarification: the Ministry of Financial Institutions indicated that the minimum anyone would receive would be \$185, so if someone was grossing \$200 a week the minimum he would get under this would be \$185 tax-free. You may want to take an example that would change the life; that is fine.

Mr Pouliot: The point is well taken. With high respect, that person Maria in fact would not be subjected to a tax rate of 15 per cent or 20 per cent. I want to bring forth the human dimension you spoke about. With respect, does it not strike you as ironic, as unjust, that if it were under any other circumstances—we are talking income replacement here—whoever would pay Maria less than the minimum wage would be taken to court and and shall be taken to court, hence the minimum wage act?

Mr Demeo: That is correct, Mr Pouliot.

Mr Pouliot: If you are talking about 80 per cent, you are down to \$4 an hour, and assuming that the cost of living would go up by a reasonable five per cent next year, then you would be talking about \$3.60 an hour for having been run over when it is not your fault.

Mr Demeo: You are talking about imposing the poverty level on someone by legislation.

Mr Pouliot: That is right. Thank you very much. That is all I have.

Mr Kormos: On an innocent victim.

Mr J. B. Nixon: Gentlemen, thank you very much for appearing before the committee. I want to assure you that I, and I think all committee members, have a high respect and regard for the

work that lawyers do in advancing personal injury litigation claims. Contrary to what Mr Kormos would suggest to you, I think many of us have received campaign contributions from lawyers, trade unions and a wide variety of people.

Mr Kormos: What about a fridge and the paint job?

Mr J. B. Nixon: I would like to ask you two specific questions. One, have you had an opportunity to look at the experience of America's threshold no-fault states in terms of premium increases? I will tell you why: because we have had evidence before this committee that over the past 10-year period, the total rate increases in New York and Michigan have been in the order of around 30 to 34 per cent, whereas the total premium increase in states without a no-fault threshold system had been in the order of 65 to 70 per cent. You suggested to me that you had different evidence.

Mr Demeo: The evidence I am relying upon is the evidence that came through the government study and Slater and Osborne, whereby the conclusions of Mr Justice Osborne in his \$10-million study were that premium reductions would only come about through a reduction of benefits available to injured claimants. The experience in Minnesota was that they had a reduction happen once; after that, they continued to go up. What you are suggesting, I believe, is that the people of Ontario should be happy to get half a loaf of bread for the same price instead of the whole loaf they have now. I cannot agree with that, Mr Nixon.

Mr J. B. Nixon: Okay. I am not actually suggesting that. What I am suggesting to you is that at least 30 per cent of the accident victims in Ontario today do not get compensation under the existing tort system.

Mr Kormos: They get no-fault.

Mr J. B. Nixon: They get minimal, if anything, under the no-fault system, which is a maximum of \$140 a week, which is below the poverty line.

Mr Kormos: Whose fault is that?

Mr Pouliot: Give me a break here.

0930

Mr J. B. Nixon: I would like to ask you, how many recommendations did Mr Kruger and Mr Osborne make? The reason I ask that—it is a rhetorical question—is that I think they both made over 100, and what we have had in this committee hearing is a long period of people

quoting to us from Kruger and Osborne, and everyone can quote Kruger and Osborne to mean whatever he wants them to mean. A lot of people forget Dr David Slater, former chairman of the Economic Council of Canada, who also did a government study of general liability insurance, including automobile insurance, and he recommended that the province move to a no-fault system.

Mr Pouliot: What about Ralph Nader?

Mr Demeo: The Slater study was a general liability insurance study. He made some comments about no-fault. The government saw fit to specifically study auto insurance under Osborne and then again under Kruger, and both those boards rejected a no-fault plan.

Mr J. B. Nixon: Just so you know, we have also heard some people tell us that the no-fault plan was not before Kruger and Osborne, so they did not comment on it. That is the problem we have.

Mr Demeo: The comment they made was that no-fault is not the way to go for Ontario. The comment Osborne made was, "Ontario has the best system." The comment made was, "Ontario should export its system."

Mr Nixon, I have to touch on your comment about the 30 per cent of people who do not receive benefits under the present system save for the \$140 a week in no-fault. Those benefits were instituted in 1979-80. If they had been indexed to inflation like the smart no-fault plan suggested, they would be up there around \$450 a week as is proposed in Bill 68 now. There would not be any need to go to this no-fault.

Mr J. B. Nixon: I agree with you. Actually it would be around \$380, but it is horrendous that they have not been increased. That is one of the initiatives here.

My final question is, what sort of tolerance do you think the public has for premium increases? If you maintain that the existing system is the best of all possible worlds—many would maintain it is the most generous of all possible worlds—hearing that claims costs are increasing over 15 per cent a year—that certainly means increasing premiums continuously—what sort of tolerance does the public have?

Mr Demeo: Is this plan the solution? The premiums are increasing in any event at eight per cent, perhaps more in the following years. I suggested in my presentation that with the \$150 million that is going to go back to the insurers, perhaps the premium reduction can be kept down in that fashion. I also mentioned that the

government has emphasized that accident prevention is really the way to go. Let's go that route first before we take away the rights.

Mr J. B. Nixon: Actually there are many initiatives, one of which is accident prevention. I would suggest too that the average increase in Thunder Bay will be zero per cent.

Mr Kormos: Get that in writing, guys.

The Chair: Gentlemen, thank you very much for your presentation.

Mr Kormos: It is another Liberal promise.

The Chair: From the Lakehead University Student Union we have the vice-president. Are they here yet?

Gentlemen, a copy of your letter requesting to appear before the committee is being circulated. You have half an hour. If we could keep the presentations about 15 minutes for your comments and then allow 15 minutes for some discussion, we would appreciate that. If you could identify yourself for the benefit of the people in the audience, as well as Hansard, please proceed.

LAKEHEAD UNIVERSITY STUDENT UNION

Mr Taniwa: I am Rob Taniwa, vice-president of finance at Lakehead University Student Union.

Mr Beckford: I am Greg Beckford. I am the president of Lakehead University Student Union.

Mr Taniwa: First of all, I would like to thank you for allowing us to speak here. We are here for more than one reason. I see two real problems with this system as it stands right now; maybe not both problems dealing directly with this system but one with this system and one with how the government went about publicizing it.

We, as representatives of students at Lakehead University and being a small government ourselves, feel that any major decision we make should be brought to our constituents first before it is passed. Every time we take these decisions, we have to hold a referendum or some kind of hearing, annual general meeting, whatnot, to publicize exactly what we are doing.

I was greatly disappointed when I found out about the Ontario motorist protection plan; the main reason was that I did not know anything about it. I was sent some information and requested more so that I could inform my constituents of what was going on and what the government was planning on doing with our insurance regulations.

When I had a petition going to find out how many students thought the Ontario motorist protection plan was better than the tort system, I found I could not carry it very far because students did not know anything about the Ontario motorist protection plan. That is 5,000 people in a sample space, and of course I did not take them all. I went searching for other people, including parents, relatives, anybody else who could tell me anything about this Ontario motorist protection plan. Of course, the only ones I found who had any information about it were the lawyers.

I am not trying to make any accusations or anything. I do not know whether the government is trying to rubber-stamp this or put it through without the public finding out exactly what is going on, but I found no one who knew anything at all about this legislation.

When I found out about it and I read the material, both the government pamphlets and the documents from the Canadian Bar Association – Ontario, I began to fall to the side of getting rid of the law, simply because I do not think it provides adequate coverage. I do not think it provides for everybody who needs help.

Being a psychology student, I know psychological injuries can result from accidents and are not covered under this protection plan. Reading through the first thing, I arrived at Osborne and Kruger, and I could not understand why the government would spend \$17 million to investigate something such as the Ontario motorist protection plan and then throw out their decisions on just making minor modifications to the tort law.

I think it has severe consequences in both northern and southern Ontario. The simple reason for the problems in southern Ontario is the high cost of living, and \$450, or whatever the maximum limit is, does not provide for a very comfortable living for a simple Canadian family of four people.

My second concern and, I guess, my largest concern is with post-secondary students in northern Ontario. When attending university, if something occurred that caused you to miss even three weeks of classes, which is being very generous, there is no way that you could catch up on the work that would be missed. Financially, to give you a bit of history, 80 per cent of our university is out-of-town students. Only 20 per cent reside in Lakehead and the surrounding area. The large majority of the students pay for their own education, myself being one of them. A lot of these students have part-time jobs during the school year, or two part-time jobs, and

full-time jobs in the summer. At any time in that year, if something were to disrupt you, whether it be in school or if you miss work in the summer because of an accident—I believe the maximum is \$185 for students—there is no way you could continue your year.

Under this legislation, that would result in the student picking up another straight year and not allowing him to graduate on the time line he has set for himself. This would cause a loss of wages for whatever entry level he is in. Most university students, after graduating, start at around \$22,000 to \$25,000 a year. It is impossible for a lot of students to deal with something like that. They may have to leave Thunder Bay to return home to wherever they reside. A lot of the apartment leases in Thunder Bay, residences included in Lakehead University, have a binding agreement that no matter what time you leave, you are financially obligated to pay the rent for a full year. In this case, the people returning home would have to find someone to lease the apartment, and in residence I do not even know how that would exactly work, whether they would be obligated to pay the outstanding fees or whether they would be waived by the university, but in any case, it still costs extra for the student.

Being from Thunder Bay, I realize that we are a primary industry town. There are a lot of unions, and I have resided under two. The shocking part about bringing it into unions is that you must use up your full benefits from CPP, unemployment insurance and all the things that people have worked 15 to 20 years for. It is taking away from everything that people worked for in town. The reason they take cuts in wages is to secure themselves for the future, and I do not believe this legislation helps them stabilize that.

0940

I do not want to talk about something that I do not know a lot about, so I could not go on to tell you if I thought anything was a better plan or give you a better idea on how to implement anything, but I feel that if three large government bodies or commissions decided that this recommendation should not go through, the government should take a listen to the pleas from them and from Ontario citizens and really take to heart this hearing, because I am sure that many of them have kids in university or have all gone through university and know the financial constraints on university students. I think that should also be taken into consideration when making the final decision.

That is all I have to say.

The Chair: Ms Oddie Munro, up to five minutes.

Ms Oddie Munro: I would like to thank you very much for your very thoughtful and meaningful presentation. As a psychology student, you certainly have brought up some very worthwhile points.

I do not think it is the intention of this bill to put you in a worse position than you are in now. In fact, a lot of the data we have analysed—and there is a lot of data that we have not—indicates that on the no-fault side, when rehabilitation benefits are awarded to students, or any person for that matter, the important aspect, when you look back at case history, is that it has to be done fast. When you look at that in relation to returning to university, I think that is certainly a very beneficial step forward.

In addition, I am wondering if you, as a psychology student, know that both in the regulations and in the act, and through the minister's opening statement, it is the case that psychological trauma will be taken as a justified reason for rehabilitation benefits, and in fact in cases where it exceeds the threshold, you will have a right to sue.

I guess my question is, with the increased number of automobiles on the highway, this bill has also looked at the deterrence aspects within the plan. I am wondering if you would care to comment on what you think about the deterrence and also the fact that there is a fault penalty on drivers who have been drinking or have gone beyond the rules of driving. So it is a plan that has both a no-fault aspect and also the fault deterrence.

Mr Taniwa: As far as deterrents go, anybody would agree they are a good idea. How they really tie in with insurance, I am not sure, but when speaking of increasing deterrents or penalties for drunk drivers—speeding is supposed to double, etc—I do not think there is anybody who can disagree that that is not a bad idea.

The one thing that concerns me about the fault is that this legislation covers people who are in accidents by themselves, more so than people who are in accidents with a second party.

I feel that if you are in an accident and you are the cause of that accident or you caused yourself an accident, that is your responsibility. Any time you get in a situation where you are at fault, that should be justified by how much you are pretty well paying out of your pocket, or if you hit someone, as I did—my insurance rate increased and I suffered the penalty, but it was my responsibility, in that vehicle, to drive it the way

it should be driven, and I did not. I paid the penalty and I think everybody else should. I cannot see other people paying my penalties.

Ms Oddie Munro: I think it is still the case that drivers who are at fault will either see a rise in their rates or will have some of the benefits taken back, depending on exactly what the merits of the case are, but on the no-fault side I guess we feel that everyone who is involved in an accident is entitled to certain benefits. I do not want to take it to extremes, but that is simply what we felt was fair.

Mr J. B. Nixon: Thank you very much for coming before the committee. One of the values of public hearings is to explain and answer questions about the legislation.

I just want to make two quick comments. One, you talk about the horror of an accident and there is no one in this room who does not acknowledge the horror and tragedy of an accident. One of the benefits of this proposed legislation under the no-fault benefits, specifically for students, is that under the existing system there is no income replacement for students, zero no-fault benefits, but under this proposal there is \$185 a week. So for that student who was not so seriously injured that he had to be permanently hospitalized or returned to his home, at least there is some income replacement that was not there before.

The other thing you commented on was the requirement that unionized or all working people would have to use their CPP and unemployment insurance before they were entitled to no-fault benefits. That is not the case. Any injured person who has UI or CPP benefits would continue to receive them and they would not be offset against his no-fault benefits. I just wanted you to know that.

The Chair: I have either Mr Pouliot or Mr Kormos.

Mr Kormos: How much time?

The Chair: You have five minutes.

Mr Kormos: No, Mr Chairman. The balance of time was some 15 minutes. That figures out, to me, to seven and a half minutes for Ms Oddie Munro and Mr Nixon and seven and a half minutes for Mr Pouliot and myself.

The Chair: The chair is ruling five minutes. If we have any additional time, we need to use it for the individuals who appear before us who have 15-minute spots. So it is five minutes, either Mr Kormos or Mr Pouliot.

Mr Pouliot: We want a fair shake, with respect, of course.

Mr Taniwa, I want to share candidly—you are student of psychology—the following scenario: One of the students you represent gets involved catastrophically in a car accident and gets two broken legs. He gets run over by a reckless driver, a dangerous driver. He gets two broken legs and two broken arms. He gets \$185 a week with no compensation for tuition, no compensation for a lost year at university, no compensation for delayed entry into the workforce. Is this your understanding of the proposed legislation so far?

Mr Taniwa: Keep going.

Mr Pouliot: Thank you; I will keep going. Ironically the person who is driving—it could be any car, let's say an Audi or a Jaguar—that person, he or she, hits his or her head against the windshield and gets \$450 a week while the victim gets \$185 a week. From your experience, are the people you represent able to afford side insurance to protect themselves against the motorist? I know it sounds like the world upside down, but this is what is being presented. That is the way Mr Kormos and I read this legislation.

Mr Taniwa: I can tell you for a fact that I could not ask the people if they could afford it or not because they simply do not know anything about it, but I could also tell you from the experience of being a student that there is probably no way they could afford to pay for an extra plan. If I had to pay any more than I am paying now, I would not be driving.

Mr Pouliot: Of course. Thunder Bay: I drove in last night from a small community where I reside and I noticed there is a nice new sign on the highway. It says: "Thunder Bay. Population 113,000." I am the vice-chairman of the standing committee on public accounts for the province and as such recently visited the Lakehead Psychiatric Hospital, and Dr Kevin Nugent, who is the only child psychiatrist for the district, talked in terms of 230,000 for the district of Thunder Bay. So approximately 113,000 people live in Thunder Bay and another 100,000 live outside.

Is this the same ratio, the same representation, when you are at university, that people have to use a car to commute back and forth, whether they use their parents' car or their own car? How many people that you know of—just offhand, a ballpark figure—reside outside Thunder Bay and attend Lakehead University?

Mr Taniwa: As I said, 80 per cent, whether they be from just outside the Lakehead, such as Nipigon, Terrace Bay or Schreiber, all the small towns, as far down as Toronto and other

countries. So 80 per cent is an accurate figure. That was told by the registrar of Lakehead University.

Mr Pouliot: By way of conclusion therefore, in your opinion, for those people having or driving a car is not a luxury but a necessity.

Mr Taniwa: Yes, I agree.

The Chair: Mr Kormos, two minutes.

Mr Kormos: I want to tell you that you should take some credit because you are the first student union, student body, as I recall, that has appeared before this committee to make comments. You are to be commended for that.

I have to tell you, though—this is not particularly encouraging—that the government spokesman, the parliamentary assistant to the minister, said on Monday in Sudbury that no matter what this committee decides—not that we have any doubt about what the Liberal majority on this committee is going to do because basically there is the trained seal phenomenon—and regardless of what is said to the committee, the government is going to forge ahead with this threshold system anyway.

The parliamentary assistant said that; he said that on the record. It was just incredible. It really threw us for a loop because we thought, then why are we going through his effort? Why are people such as yourselves, such as people across Ontario appearing at Queen's Park in Toronto, Sudbury, Thunder Bay, Ottawa and Windsor, expressing critiques and concerns about this legislation?

You should also know that the government wanted to ram this legislation through before the end of December without any public hearings. Anybody who says the government was prepared to have public hearings without being confronted by the opposition, and finally acquiesced, is either misinformed or lying—I can tell you that—because the government wanted to grease this up and ram it through. They are the little lap-dogs of the insurance industry and they were going to do everything in their power to make sure that this new bill was implemented, because the stakes are big.

You, me and the rest of these people sitting out here are just little people. The fact is that the insurance industry in this province is incredibly powerful, incredibly wealthy and the stakes are big, because we are talking about big, big bucks for the insurance industry at the expense of people such as yourself, myself and every member of the driving public, everybody who is a possible victim.

When you talk about how you conduct yourself in your union, you say you go to your

people; you go to your constituents. What we see here this morning is—let's face it, the committee has had trouble getting people in favour of the legislation appearing before it. The fact is that by and large the only people who see this as good legislation are the insurance companies who come in here and who have been gouging the drivers of Ontario for years and years. These are the guys with the short arms and deep pockets. These are the guys with whom you have to fight tooth and nail every time you want to try to settle a claim. Whether it is no-fault or somebody else's fault, you have still got to fight tooth and nail.

They talk about legal expenses. The fact is that there are legal expenses. The legal expenses are generated because they make little people fight to get what is rightly theirs. It is the insurance industry that generates those legal expenses, not the law as it stands. Thank goodness the law as it stands permits people, if need be, to hire a lawyer or somebody who can speak on their behalf to fight for what is rightly theirs, because if they did not have that right and they were remaining the victims of the insurance industry you can bet your boots they would get precious little. So the sense of democracy at Lakehead University is far more profound and far more intense than the sense of democracy is right here.

Indeed the chairman, as you just heard in this little exchange, is loath, reluctant, and as a matter of fact is not going to permit the full period of time for questioning. Notwithstanding that there were some 15 minutes left, he wants to restrict it to five minutes per party. I cannot help but wonder, if you were an insurance company that was going to sit here and pat the government on the back and maybe make some more commitments for a little more grease come next election time, whether the chairman's ruling would have been the same.

As it is, that is the way this government does things. It is not particularly democratic or attractive or enviable. I would be far prouder to be a student at Lakehead than I would be to be a member of this government, I tell you.

The Chair: Gentlemen, thank you for your presentation, and Mr Kormos, for your statement.

Mr Kormos: Thank you.

The Chair: Is Mr McClay in the audience? Mr Stach? Am I pronouncing that even close?

Mr Stach: It is Stach.

The Chair: Thank you.

Mr Stach: Good morning to you.

The Chair: The clerk is distributing a package of material that you have presented to us. We have 15 minutes. The time is yours. Please proceed. If you could leave some time for some questions and discussion, we would appreciate that as well.

E. W. STACH

Mr Stach: Thank you, Mr Chairman. Before I launch into the discussion of the particular issue that I have drawn attention to in my brief, I would like to respond briefly, if I could, to a comment made by Mr Nixon with reference to the rate increases in the last couple of years in no-fault jurisdictions as being 34 per cent. I think they were very much higher in the tort jurisdictions to which he referred.

I think it is a mistake to look at rates over a short term of one or two years. There are studies that indicate that over lengthy periods of time—I think Professor Carr of the University of Toronto has made reference to them—comparing the no-fault jurisdictions against the tort jurisdictions, the rate of increase has indeed been higher in the no-fault jurisdictions. So there is a body of data out there that supports the proposition that it is in fact cost-efficient—

The Chair: We can maybe save some of that exchange for the discussion period, if you leave time for that, and we could get into that.

Mr Stach: Thank you, Mr Chairman. I would indeed like to address that if given the opportunity at a later stage.

I am a lawyer, as you might expect, but more importantly I am a citizen of Thunder Bay, a long-time resident of northwestern Ontario, and above all I am a consumer of the automobile insurance product.

Thunder Bay is uniquely situated, about 35 miles away from the Pigeon River border. Every year thousands upon thousands of Thunder Bay residents and residents from Nipigon and elsewhere in northwestern Ontario cross that border to travel into the United States by automobile. Most have the city of Duluth, Minnesota, as a destination. Those visits have been commonplace for decades.

Quite recently, however, there has been a phenomenon marked by a very substantial surge in the amount of motor vehicle traffic across the border and travelling into the United States. If members of the committee have not taken that trip, I would commend it to them because it is one of the most scenic you will ever have the pleasure to see.

1000

It curves around Lake Superior. There is a good deal of wildlife. You can see deer frequently between Grand Marais and Two Harbors. At the same time the highway in that stretch between Grand Marais and Two Harbors has an uncommonly high number of serious curves and hills. Even in the summertime it can be a hazard because of the configuration of the highway, because of the potential presence of wildlife on it and because of fog and mist that from time to time come in from Lake Superior. In the winter months it can be particularly hazardous, especially when it is snowing and especially when there is an accumulation of snow on it.

Many residents travel to Superior and many go there to shop. They have gone there in such numbers in the last three to four years, and in the last two years especially, that local merchants have indeed expressed some concern about the volume travelling into the United States. When our residents travel down there, they are understandably not as familiar with the routes and the cities, and the traffic laws though similar are different. The point I am leading up to is that this volume of increased road traffic into the United States, the slightly different laws and the hazards the highway itself presents can among other things lead to road traffic accidents and cause injury, among others, to American citizens.

In the course of my brief I have made reference to some statistics to indicate the very considerable rate of increase in traffic across the border to highlight the potential concern. Under the current law in Ontario, an innocent victim of an automobile accident has the right to sue for damages for compensation and to recover on a 100 per cent basis any property damage and any wage loss.

Under Bill 68 there is going to be a very strict threshold test that has to be met, and estimates say that between 90 and 95 per cent of all accident victims will lose the right to sue. If a Thunder Bay resident travelling in an unfamiliar portion, for example, of the city of Duluth, negligently causes injury to an American citizen and that American citizen, for example, has broken bones and is off work for a period up to one year, the American citizen has, of course, an opportunity to sue in the American courts. He would not be able to sue in Ontario because his injuries would not meet the threshold under Bill 68. The point of the brief example is to illustrate that if the American were to sue in the United States and to obtain judgement, that judgement

would have to be payable by the Canadian automobile insurer.

I mention the example to dramatize what I perceive to be the unfairness of a situation that allows a foreigner, a nonresident, a noncitizen of Ontario to claim and receive benefits and not be governed by the threshold that restricts Ontario citizens. When you juxtapose those two situations, I think it dramatizes or highlights the unfairness.

The only other point I would like to make at this stage, before my last point, is that I would caution members of the committee because the right to sue is being substantially taken away under Bill 68. Whenever any government takes away rights you have to be very, very cautious. The potential tradeoff is that there is going to be a saving in money to the consumer. What the consumer has to ask is, is it the tradeoff? Is it worth giving up a fundamental right that I have enjoyed for several hundred years or that residents of this country have enjoyed since Confederation in return for what is being offered to me?

In my respectful submission, knowing as I do something about the automobile insurance policy, what it offers to the public and to me now as compared to what the public will get if Bill 68 comes into being, I am absolutely, thoroughly persuaded that it is a bad bargain and that it is not one that is in the interests of the public to accept.

There are, to be sure, portions of the government's proposal that are laudable, for example, the no-fault benefits which have been \$140 a week since 1978. To increase them to take the rate of inflation into account would bring it close to the \$450 that is now being proposed. I commend the government for that kind of initiative, but it does no more than to bring the current policy up to date to take into account the effect of inflation over 11 years since it was last changed in 1978.

The Chair: I have Mr McClelland, Ms Oddie Munro, Mr Nixon and Mr Kormos for up to three minutes.

Mr McClelland: Thank you very much for your presentation this morning. One thing I am going to pursue by way of clarification and have some research done on is with respect to conflict of laws that are not professed to have any expertise in that area. I would simply like to say that we have heard a variety of scenarios having a similar situation or a fact scenario that you have presented that has been suggested to this committee using a different United States jurisdiction, that in fact good law says that the

no-fault benefit of the jurisdiction in which the accident occurs would become the prevailing determination of benefits that would go to both victims, the at-fault victim and the innocent victim, if you will. I think that is an area that needs to have considerable clarification and I am going to pursue that and ask the committee to do the same.

I also want to make one other comment with respect to the potential tradeoff that you referred to. Clearly in the proposed legislation there is an element conceptually where there is a tradeoff. Indeed the pain and suffering and nonpecuniary loss of the injured victim is being traded off with respect to some other proposed benefits. But I would hasten to say that it is clearly my understanding and my position at this point that it is much more than just simply saving us some money if you translate that into savings on premium.

I view the philosophical underpinnings to the proposed legislation as saying in short, or if I could paraphrase loosely, that we are going to take a look at the pain and suffering components of the cost of insuring the consumer in Ontario, look at what we can give them in place of that and move, if you will, from a concept of retribution, which pain and suffering clearly is. It may be, and it is an arguable point philosophically, that it is a fundamental point of justice. I would suggest that it is not necessarily so. There are many elements of tort law that do not allow that.

Having said that, and even given that it is a fundamental right to sue for pain and suffering, and I say again that there is some issue with that, we are saying that on balance we are looking at income indemnity. What we want is speedy income replacement. We want to be able to put people back in a position where they would have been economically, to move quickly with respect to the benefits that would accrue to them in terms of rehab and getting them back into the workplace and being productive members of our society.

I say that with respect to you, sir, because I think it is much more than just saving money, if you mean by saving money insurance premiums. We want to very clearly move towards a system that is going to put money more quickly into the pockets of injured parties, whether they are at fault or not at fault, and to ensure that the benefits that they would have go to them in such a manner that we could get on with the process of getting them back into physical and mental condition to be active members of our society.

Again, I emphasize that because I do not want to leave the impression that it is simply a premium-driven issue. There is much more to it, in my view.

Mr Stach: May I make a comment?

Mr McClelland: Certainly. Please do.

1010

Mr Stach: In reference to the first point you make, there is in fact a no-fault system in the state of Minnesota where there is a verbal threshold: in part a verbal threshold and in part a monetary threshold. In substance, the threshold in the state of Minnesota is a lot easier to overcome. In other words, a far greater percentage of the public would be able to have and to continue to have the right to sue. In the example that I gave, it is something that would easily pass the threshold in the state of Minnesota.

Second, in regard to the point you make about getting speedy income replacement into the hands of a victim of an automobile accident, that is a laudable objective. I think it is accomplished by bringing the section B weekly indemnity, which is presently in place, up to date for inflation. That would probably go a long way to accomplish that objective.

The Chair: Mr Kormos, three minutes.

Mr Kormos: Are we dividing the time equally or are we dividing it three ways, Mr Chairman?

The Chair: We are dividing it three ways. Actually three minutes.

Mr Kormos: Are we dividing it three ways?

The Chair: No, you have three minutes. The presenter used approximately half—

Mr Kormos: I am asking you a question. If you do not want to answer it, say so.

The Chair: I am telling you that the presenter had 15 minutes to make the presentation. The presenter started at 10:56, so 15 minutes would be 10:11. It is 10:11 now.

Mr Kormos: Okay.

The Chair: You have three minutes for your question, comment or statement. Please proceed.

Mr Kormos: Because you jerked us around on the last one.

The Chair: No. He had three minutes as well. Please. Okay? Proceed.

Mr Pouliot: If the Tories choose not to come, that is their problem. Split the time evenly.

Mr Stach: May I be permitted to make an additional comment rather than hearing your question? One of the questions I think Mr Nixon properly put is, "What do you think the tolerance

of the public is to premium increases in automobile insurance?" I think that is a fair question. My answer to it is, I think the public would be willing to pay something that it perceives to be fair.

Part of the difficulty with what has happened in the last little while is that they were being asked to pay a very sudden—there was a dramatic jump in the premium. I think suddenness is something that the consumer out there, including myself, is not ready to bargain for. When it comes with that kind of suddenness and that kind of sharp increase, there is going to be resistance.

The point of the matter, though, is that if you look at the price of automobile insurance over the last decade and compare it to other consumables, the cost of hydroelectric power or groceries, it is proceeding virtually at the same rate, even if you take the 35 per cent increase into account.

Mr Kormos: What the public is intolerant of is the lies. The public heard in 1987 a promise from the Premier (Mr Peterson) that he had a very specific plan to reduce auto insurance premiums. If this plan is the one he had in mind, he should have talked about it right then and there instead of going through millions of dollars at the Ontario Automobile Insurance Board, which told him this was not an acceptable plan, that the threshold system was not acceptable and that its rewards did not come close to offsetting the cost.

Mr Stach: In my view, the government wasted a lot of money in these studies and then apparently was unwilling to follow the advice or the recommendations that flowed from them.

Mr Kormos: That is right, because the advice and recommendations that it is following are those of the insurance industry. Taxpayers are going to subsidize this scheme first to the tune of some \$140 million. The three per cent premium tax is being eliminated and the OHIP subrogation rights are being eliminated. The increased profits in the first year alone for the insurance industry are estimated to be anywhere between \$600 and \$700 million, perhaps even higher.

That is an incredible windfall for the insurance industry and it is being gained on the broken backs, broken legs, fractured skulls of kids, seniors and victims left and right who deserve far, far better, who are going to have pain and suffering that is going to be very real. This government is trying to create the myth that is only the most modest of injuries that are going to be sidestepped. Well, baloney. As I said, it is the broken legs, broken backs and fractured skulls of innocent victims at the hands of drunk, reckless

and careless drivers. They are going to be paying and subsidizing the insurance industry.

The insurance industry has very cleverly managed to switch things around, as I said earlier, so that the public is insuring the insurance industry instead of the insurance industry assuming risk. The incredible deceit that is inherent in the presentation of this bill is overwhelming as are the efforts to criticize unfairly critics. The government and the Minister of Financial Institutions (Mr Elston) dump over John Bates of PRIDE, the head of People to Reduced Impaired Driving Everywhere, and crap all over Ralph Nader, for daring to come up here and be critical; yet the same government will import all the New York state lackeys that it can to tout a threshold system and has no hesitation in bringing up people such as Irene Bass of William Mercer from New York state and Manhattan to do its actuarial work at the Ontario Automobile Insurance Board.

The tone and the direction of the government propaganda in this regard is incredible, the fact that it would present to the public that it is an either/or situation: either you do it the insurance company way or else you are going to be belted with big premium increases. This government has not lived up to its promises. It promised in 1987 through its leader the Premier to produce a specific plan to reduce premiums and it has not come close to doing that. It has produced a very specific plan to increase profits for the insurance industry and to ensure that injured victims will receive nothing.

Mr Stach: Well, if I can comment, I agree that the government perhaps unwittingly made things worse by putting an artificial cap on things and keeping an unduly low ceiling on it. My own view of Bill 68, and I think one of the reasons why the insurance industry is so strongly in support of it, is that it will be a real benefit to the automobile insurance industry. According to the Consumers' Association of Canada, it is an unduly good benefit and relatively bad bargain for the consumer.

The Chair: Next is the Organization for the Multi-Disabled, Mrs Bellavance. The clerk has distributed copies of your presentation. You have a half-hour of the committee's time. Please feel free to use it however you would like and if we could save some time for some questions, comments and discussion, we would appreciate that. Please identify yourself and proceed.

ORGANIZATION FOR THE MULTI-DISABLED

Mrs Bellavance: I am Alice Bellavance. I am the president of the Organization for the Multi-

Disabled. I thank you for the opportunity to be able to make a presentation.

The Organization for the Multi-Disabled was formed from a steering committee in the early 1980s and was incorporated in 1983. It was a gathering of families, relatives, professionals and individuals who had two or more major challenges such as a physical, mental, sensory or emotional disability. Many of the consumers we represented had these disabilities at birth; however, not exclusively.

We found by the mid-1980s that there was a new population of significant numbers emerging. They were primarily male, young and living with the effects of having sustained a traumatic brain injury. In Ontario today, 44 people per day will begin to live with these effects of which 34 will acquire their head injury in a motor vehicle accident or related to a motor vehicle accident. The outcome of these injuries are as diverse as the number of individuals involved. Fatality, of course, being the extreme of the injury to apparent complete recovery at the other end of the spectrum.

Therefore, the degree of support or assistance to live as independently as possible will also vary. With virtually no community supports now in Ontario for individuals living with the effects of head injury, this new system will exacerbate the situation further.

A tragic component of the proposal is the \$1,500 monthly limit on expenses for long-term care. Even this amount would not be paid if insurers can convince an institution to admit an accident victim. In a province which institutionalizes disabled people at an unprecedented rate and provides virtually no community support, this limit represents a life sentence for many disabled people.

1020

Despite government policy to respect the wishes of disabled people and their families for community living, Bill 68 will increase the rate at which Ontario disabled residents wind up in institutions. I might just point out that that is in direct contravention to what the government is saying through the Ministry of Community and Social Services and the Ministry of Health in their long-term care reform in trying to keep people out of institutions. I am not sure how this is all going to work.

Because the \$1,500 monthly limit for care costs is not indexed to inflation, the system is certain to impoverish and institutionalize an increasing number of accident victims each year that it operates. There is also a ceiling on that. It

is \$500,000, but 85 per cent of people who are injured in motor vehicle accidents are between the ages of 15 and 25, so \$500,000 is only going to last just under 28 years.

It is also not indexed. The \$1,500 a month is only going to buy three to four hours a day of attendant care, and by the year 2005 that \$1,500 a month is only going to be worth \$720. So as time goes by there is going to be less and less dollars available to provide support for an individual in the community.

Another unfair aspect of the plan is that accident victims must first incur expenses for rehabilitation and long-term care before reimbursement is available from the victim's insurer. This requirement that rehabilitation and care be financed in the first instance by the victims effectively puts such benefits beyond the reach of many accident victims.

I also have grave concerns about verbal threshold. The threshold language of the legislation states that you must suffer "serious and permanent impairment of an important bodily function caused by a continuing injury which is physical in nature." While the words "serious and permanent" are very much open to interpretation, the most perplexing choice of language is the phrase "impairment of important bodily function."

"Bodily impairment" is likely to exclude brain injuries, which are often diagnosed as psychological syndromes. Physical damage to the brain may not be detectable years later because structurally the brain appears normal on neurological tests. The phrase "continuing injury" is also peculiar in that injuries only occur once. The writers must have meant continuing physically detectable body damage of continuing impairment or disability. This type of terminology is going to be a barrier to individuals who sustain traumatic brain injury.

In April 1989 the Ontario Head Injury Association sponsored public hearings into "The Status of Wellness Opportunities for Persons Living with the Effects of Traumatic Brain Injuries in the Province of Ontario." There were two days of hearings in Toronto, and one each in Ottawa and Thunder Bay.

There were volumes of stories from families, professionals and individuals who had sustained head injuries about the lack of co-ordinated service provision, the tough stance that insurance companies were taking and denial of benefits, the fact that ordinary family members were requiring to retain services of a case manager and/or an experienced attorney to wade through the maze

of roadblocks and hurdles to access some kind of service.

I think that just goes to show that it is not the lawyers who are delaying it; it is the insurance companies. They want one more neuropsychological assessment, they want one more of this kind of an assessment and they want another one. There is a young gentleman who is now almost five years post-accident who has had these things done. Geographically we are closer to Winnipeg so he goes to Winnipeg to get his neuropsychological testing done. The insurance company says: "That's no good. The specialist's not from Ontario." So now he has to go to Toronto, which is double the distance, to get neuropsych testing.

First of all, you have to wait six months to get the appointment. So it is very, very difficult for families to have to continue. Of course, the whole time they are waiting they have to provide care for this individual. This particular individual is also a perfect example of someone who, in the new system, probably would not meet the verbal threshold. He does not have a significant physical disability. He walks and talks. If he walked in this room now, you would not think anything ever happened to him, but he has significant deficits.

The other comment that I would like to make regarding the hearings and in reviewing a lot of the submissions that were made in southern Ontario, Toronto and Ottawa, as well as in Thunder Bay, was that none of the families or individuals was complaining about the legal fees. The thing is, if there was, consumers do have redress and if that is also another concern, that lawyers are getting too much money, let's legislate what is happening with legal fees. Let's not legislate dollars that are going to provide care for individuals who have sustained significant disabilities due to head injury.

Just before Christmas, I was totally ignorant about Bill 68. However, since then, I have received reams of information. First of all, I received information from lawyers, but I have also received information from People Against the Insurance Nightmare, the Committee for Fair Action in Insurance Reform, Cheshire Homes Foundation, the Advocacy Resource Centre for the Handicapped and the Ontario Head Injury Association and I have reviewed numerous articles in newspapers from across the province.

It would seem that the government and the insurance industry want to railroad this bill through before the public gets much wiser. I hope that John and Jane Q. Public will become more informed via these hearings and make their

concerns known. I thank you for this opportunity to make this presentation.

Mr Pouliot: I am delighted that you would share a few moments to inform the members of this committee about really what is most important, you know, as a society. I do not want to prolong this. I do not want to make a speech, but any one of us who has a bit of dedication to his or her mandate, who is supposed to mean what he or she says, not only when there is an issue but when people get up in the morning, as a commitment to the less fortunate in society, reflecting the way we are or the way we ought to be, the way we treat the people who have less, the people who depend on the system to really take care of them. They assume that quite often they are taken care of.

I think your courage is great to do it on a daily basis. Not everyone has that flame, if you wish, or that internal strength. This is what baffles me about the kind of repartee and confrontation that you see, that when all is said and done, what are people like you and me doing, you know, when we examine ourselves, when we look at it, because we are residents in waiting. No one is immune.

I often ask myself, why would people do harm to the less fortunate? Because they are not protected and you have just said so? Why is it? Is it because they are mercantile? Is it because the fix is in, there is a deal? Is it because systematically and deliberately it is a world of grab, grab, grab? I try not to believe those things. I do not want to sound pious, but I really think no, it cannot be. Nobody makes a deal to hurt these people, and yet it really appears that way, that one more time, for a few dollars more, for a fistful of dollars, the people who can least defend themselves, who do not have our kind of forum, who do not have immunity here or in the House are being kicked.

When I look at this kind of proposal and your presentation, madam, you know, I think, "Well, it's the rich against us." What is being done here is wrong and it should be changed. I can understand the political games that go on where people really do not have a plan, except a plan to pick your pockets in terms of votes. We will see all kinds of things—not all of them are always rational—and then they will scramble to come up with expediency. But your presentation tells me that people should not be left holding the bag.

You highlight the very element, the very component that made this legislation, in my opinion, cast in hell—and the words are not too strong, Mr Chairman—and ill-fated. The people

who have had the audacity—not the courage—to draft the proposed legislation will be back, literally in shame, amending it, as we have witnessed amendments on top of amendments, with some, if I may, similar legislation that was drafted in a hurry without listening to presenters, to interveners, to participants who had a better mousetrap or a better deal in mind. I just want to thank you for your comments, and I am certainly impressed.

Mr Kormos: You are undoubtedly going to be met with the argument that it is a tradeoff, that it is one or the other. What I am talking about is that what is happening in this legislation is the right of thousands and thousands of people, 95 per cent, perhaps more, of the innocent injured victims, the right of those people to be compensated for pain and suffering and for loss of enjoyment of life. It is being taken away. It is as simple as that.

1030

The government has been told by the insurance industry what to think. It has been told to say: "Well, what do you want? Do you want care for head injury people regardless of fault, or do you want compensation for innocent victims of pain and suffering?" Well, I say this—obviously, and you know this better than anybody else in this room—persons with disabilities, head injury victims, are not all motor vehicle accident victims. Of course not; they come from all walks of life, and the sources of their injuries are as varied as the imagination and human pursuits permit.

All of us should believe, and Mr Pouliot spoke to this—regardless of fault, and that is why we have had a no-fault element for over a decade in Ontario, and quite frankly regardless of the cause or the incident in which your injury took place—there should be a minimum standard of care available to you. Fifty dollars a day puts you in an institution that Charles Dickens would not have dared dream up. The government, as you say, has already established a pattern, so perhaps it is consistent, because this is the government that will not even grasp the bull by one horn, but rather makes bold promises and then is hard pressed to even come close to keeping them.

We believe, and I will tell you what the opposition firmly believes, that everybody, regardless of fault, has to be compensated for his wage loss, has to be provided with long-term care and rehabilitation. It is absurd to talk about long-term care, even with a ceiling, because at the age of 45, if you are 18, do you stop requiring long-term care? If at the age of 45 you are still on long-term care, the likelihood of recovering is

virtually nil. The likelihood of having to remain there for the balance of the 10, 15, 20, 30 years of your life is very real.

So we believe very firmly that everybody, regardless of fault, is entitled to fair wage replacement, to long-term care, to rehabilitative care, to medical care. Any humane and caring society would guarantee that. But we also firmly believe, which this government does not, you see, because this government believes in profits for the insurance industry—we quite frankly believe that people are more important. We believe that innocent injured victims, the victims of the drunk drivers, the little kids who get mowed down at crosswalks, deserve to be compensated for their pain and suffering because they are innocent victims. The fact is that under this legislation, the drunk driver in the Jaguar will get treated better than the 12-year-old kid who is run over at a crosswalk.

M. Pouliot talks about legislation that is cast in hell. That as is demonstrative as one could ever be of how grossly unfair this legislation is and how miserably pathetic a government would have to be to be endorsing this and promoting this to ensure profits for the insurance industry on the broken backs and broken legs of little kids. My God, that makes me sick.

Ms Oddie Munro: If I am correct, I believe that currently there are no provisions for long-term care to an accident victim, and this current scheme is attempting to place a \$1,500 limit. We have received representations from a good number of groups, including yours, that that is not realistic. We have asked groups to provide us with statistics or sources, and I think yesterday we received that kind of comment from Cheshire Homes Foundation and some of the other rehabilitation places.

The long-term provisions for rehabilitation continue under the no-fault, but for the long-term attendant care, those particular services can be accessed in the home, so I do not think there is any intention there to institutionalize. That was just for clarification; you can certainly comment if you wish.

Obviously you are concerned about things that are not observable, and we have attempted to put psychological trauma and stress not only into the regulations but inferred in the act. I am wondering if you would care to comment as to whether they are strong enough. We believe that that impact not only on the no-fault side but on the right to sue at the threshold will in fact allow people who have suffered psychological damage to benefit and to sue.

Mrs Bellavance: My understanding with the way this is written now is that it is physical; it is not psychological or emotional. For a lot of people who have sustained a head injury, a lot of the deficits they have are sort of those intangible kinds of invisible things such as cognitive, judgement, making good decisions, lack of impulse control, all of those kinds of issues. How do you rate that?

The only person who can talk about what happens to that person, the changes in that person, are family members, because there are significant personality changes in a lot of people. If he were to walk through the door and you sat down and had a cup of coffee with him, you might not realize that that person had ever had an injury, yet that person, who may have been employed or going to school or doing whatever, now, because of these significant changes, can no longer carry on in that vein.

Ms Oddie Munro: The regulations are draft and we may need additional clarification, but I think it has been our intention to include psychological trauma in the presenting kinds of evidence and also in terms of care givers, to accept psychologists as part of health care practitioners. But your points are extremely well taken, especially in terms of evidence or information from the family.

Mrs Bellavance: I would just like to address one point that you made about attendant care. Currently there are services in the community that people can access, but if an individual has sustained a head injury, has problems with short-term memory and cannot direct his own care, he cannot access attendant care, because that is the way attendant care programs work. They are primarily for physically disabled individuals who are capable of saying, "I want my supper at five o'clock and this is what I want for my supper and this is how I would like it prepared." But if persons who have sustained a significant head injury, who can still walk and talk but have problems with short-term memory and judgement, cannot direct that care or cannot decide what they are going to wear one day, then they do not qualify for the attendant care.

There is also a maximum on how many hours of attendant care you can receive in a given day. It is about 15 hours a week. Sure, you can say, "You can get them homemaking through the integrated homemaker program." The limitation with that is that you need some personal care involved, not just straight meal preparation or homemaking.

Where I am gainfully employed, we provide respite care to families who care for individuals with special needs. I have families on my case load who care for individuals with traumatic brain injury. They are getting maximum IHP, maximum attendant care, we are providing what we can within our limits for respite care, and it is still not enough support.

What happens when those parents age? They are not going to live for ever. Their young family members are going to have to survive. More than likely, a head injury is not shortening a lifespan, so what happens when the parent becomes unable to continue caring for that individual?

The Chair: Before I move to Mr Nixon, Mr Sola and Mr Callahan, just a point of clarification from the Ministry of Financial Institutions with respect to accessing rehabilitative services.

Mr Endicott: They are fully accessible. There is no physical requirement or physical component in the test for access to those benefits.

Mrs Bellavance: For which benefits?

Mr Endicott: For the rehabilitation benefits or the long-term care.

Mrs Bellavance: I was not talking about rehab and long-term care. I was talking about existing services such as attendant care and homemaking support. Or is that under the broad spectrum of rehabilitation in ministry language?

Mr Endicott: Access to those benefits, of course, is provided for under other statutes. They are not provided through this and they are not interfered with, as it were.

You will still be able to make the claim for those as well, but the point he may be trying to make—and I do not want to put words in his mouth—is that the physical test applies only to the threshold in terms of seeking redress through the legal system. That access to rehabilitation services, the bumps on the head, whatever, where you say an individual walks through the door, my understanding is, and I was attempting to qualify, that individual would still have access to those services.

Further, in terms of the other programs, for example, administered by the Ministry of Community and Social Services, the insurer will still be required to pay the long-term care benefits. The person will not have to claim those other benefits first, will not have to go to them. The insurer will still be required to provide those benefits, even though there are these other programs.

The Chair: I have Mr Nixon, Mr Sola, Mr Callahan, for approximately a minute each.

Mr J. B. Nixon: Just a couple of points of clarification. You should know that groups like ARCH, the Advocacy Resource Centre for the Handicapped, have appeared before this committee and said: "Listen, we approve of the broad parameters of this program. We have very specific concerns about very specific matters, but generally we applaud the wide expansion of no-fault benefits." As you know, there was no provision for long-term care under the existing no-fault benefits, and it is greatly expanded, perhaps not enough. That is why we are having the committee hearings, to hear what it should be.

There is a lot of argument about whether or not the head-injured exceed the threshold. We have had testimony from the insurers that in fact the head-injured no doubt exceed the threshold and would have the opportunity to sue, coupled with full entitlement to the expanded no-fault benefits. So I suggest to you that the expansion of the no-fault benefits will be of great service to the head-injured.

There is one issue you specifically raised which I want to get clarification on. My understanding is that under the original draft regulation which was proposed for consultation, an accident victim first had to incur expenses for rehabilitation and long-term care before he got reimbursement. My understanding is that as a result of the input from groups like yourselves, that has been changed, and perhaps the ministry official could help me, so that you do not have to incur the expense and then seek reimbursement. How does it work?

Mr Endicott: That is correct. I would say that I do not think there ever was an intention in the drafting to say that you had to incur the expense first. The language did say "incur" in the first draft, which did leave that suggestion. It has been removed, so that particular concern has been addressed.

The Chair: Thank you very much for your presentation.

Mr Callahan: On a point of information, I just wanted to find out from your group whether you have any statistics on persons who settled or got an award at trial and became totally disabled thereafter due to a disability that was unknown at the time. That is number one. If you cannot help me, I think that information should be made available through the government to the committee.

The second category is any stats on those who did not choose to sue or could not afford to sue who remained disabled and had to find ways to deal with that.

The third one is any stats on those who, because they were at fault, were denied any help at all, such as in my community. Probably the classic example was a \$5-million lawsuit in Brampton where the young boy, after all the decisions were reached in the Supreme Court of Canada, got nothing.

If anybody has those stats, I think they are of some importance, because those are the people who are left out in the cold now and who, as I understand it, will be brought into help under this plan. If anybody can help with those stats, I think they are important.

The Chair: Do you have any stats available?

Mrs Bellavance: No, not off the top of my head.

The Chair: Okay, we will ask research to try to dig those up. Thank you very much for your presentation.

Is there a Mr McClay in the audience? Mr McClay is not in the audience. Is Dr Rintamaki in the audience? Okay. Is Mr Smith in the audience? Do you have a written submission?

Mr Smith: No, I do not. I will just summarize.

The Chair: Maybe you can identify yourself. We have half an hour for your presentation, and whatever time you do not use in terms of your presentation, we will enter into some comments, questions and discussions. Please proceed.

DOUGLAS SMITH

Mr Smith: Ladies and gentlemen of the standing committee on general government dealing with our province's move towards a threshold no-fault system for automobile insurance, welcome to the city of Thunder Bay and thank you for allowing northwestern Ontario the opportunity of addressing this most important issue.

My name is Douglas Smith and I appear before you this morning as an automobile insurance broker with 12 years experience, the senior vice-president of E. L. A. Smith Brokers Ltd, a firm with automobile insurance beginnings that go back to 1946. I am a two-term, past president of the Thunder Bay Insurance Brokers Association and an associate member of the Insurance Institute of Canada.

Through my affiliation with the Insurance Bureau of Canada, I have had the opportunity to watch the automobile issue evolve over the last

four to five years, with the primary problem seeming to be the escalating cost of that system. That issue has now expanded to include consumer affordability, product availability and product delivery of benefits. I believe the proposed Ontario motorist protection plan effectively deals with these areas, while providing enhanced claim benefits to a larger percentage of accident victims, quicker and more comprehensively than under the present adversarial system.

From that Friday in April 1987 through to today, there has been an increasing rates inadequacy for the automobile insurers. The costs of the present adversarial system have continued to grow by approximately one per cent a month, while the government has allowed premium increases of less than 17 per cent over that period, resulting in a further gap of some 20 per cent from the break-even after investment income point for insurers. The point is that the automobile industry has been crippled under the existing adversarial system. This has resulted in a very tight marketplace that on the whole has not been serving the six million drivers of the province well.

The Ontario motorist protection plan will put a handle on these escalating costs and return stability to the marketplace. A stable insurance product is of course the protection I sell to my clients. As an insurance broker, the stability of the insurer is very important, but my relationship to the insured is equally, if not more important. They rely upon me to be there in time of need and I do not believe the need is best being provided for by the present lottery-style adversarial system.

What has become very clear is that the customer is not willing to pay more than the average automobile premiums presently being paid in the province, in the \$760 range. Mr Kruger's board concluded the need for a 35 to 40 per cent premium increase from that \$760 figure, which would then again only allow the industry to break even after investment income, still leaving the problem of escalating costs.

The proposed threshold no-fault plan anticipates the stabilizing of premiums at their current levels while increasing the current inadequate accident benefit levels and still maintaining the right of those victims permanently and seriously injured to have access to the tort system.

It would be the best of both worlds if the accident benefits could be enhanced and delivered on a timely basis, while at the same time allowing the insured the same access to the tort system that is offered today. But clearly such a

system would require too high a premium, which the driving population of the province is not willing to pay. The industry is prepared to offer that system which the driving population is willing to pay for, and the threshold no-fault system seems to be the balance and the compromise required. What is equally important, the product will stay within the private sector where the competitive forces will ensure future product enhancement, efficiencies of operation—

Mr Kormos: Oh, yeah.

Mr Pouliot: Oh, yeah.

Mr Smith:—and a level of service that is being demanded by today's consumer.

Mr Kormos: And big donations to the Liberal Party.

Mr Callahan: I think you struck a note over there.

The Chair: Order.

Mr Smith: Better talker than he is a listener.

Perhaps I may state a few concerns regarding the adversarial environment within which the industry is operating today. The statistics show that the majority of accidents are not caused by gross negligence but rather by a fortuitous event beyond the driver's control to which no third-party fault can be attributed. As a result if fault cannot be proven, the accident victim is left to recover under the existing accident benefits section of the policy which, as has been brought out, has not been amended since 1978, and again, cannot be amended given the inadequacy of today's premiums.

1050

Moreover, those who have been able to demonstrate fault following an accident under the existing adversarial system are often then subjected to long and protracted litigation which carries the element of uncertainty. Even if successful, funds often do not become available quickly enough to deal with the rehabilitation of an accident victim, whose injuries then become chronic. The basic principle of all insurance is indemnification, which is the process of putting an insured as closely as possible back into the position he was in prior to the loss. If injuries have become chronic due to settlement delays, indemnification is not being met.

Of course the other basic principle of insurance is the probability of large numbers, where the premiums of the many pay for the losses of the few. Indemnification has a cost factor attached to it. The higher the level of indemnification demanded, the higher the premiums required to pay for that level. Again, the

consumer does not want to pay more than what he is paying today, and the threshold no-fault plan is a reasonable compromise between affordability and availability.

The main area of product improvement will be the enhanced accident benefits. I am sure you are all well aware of the current levels as compared to the proposed levels, but I would like to take this opportunity to again highlight the significance of those enhancements: loss of income from \$140 per week to a maximum of \$450 per week, tax-free, with the availability to purchase higher limits if needed; the inclusion of retirees, students and the unemployed for the first time; the addition of weekly child care benefits; most importantly, the increase in medical care and rehabilitation from the grossly inadequate limit of today's \$25,000 to \$500,000 for supplementary medical care and rehabilitation, as well as a further \$500,000 for long-term care, all accident benefits being payable within 10 to 30 days.

Along with the increased limits for the death of a dependant and for funeral benefits, enhanced accident benefits will put the funds into the hands of more claimants more quickly, which is a more efficient system than the present adversarial system.

Of course those who have been seriously and permanently injured will retain their full rights under today's tort system, all at a premium that the consumer is willing to pay for and which the industry is willing to provide. Indeed, a significant percentage of the \$500 million plus litigation dollars that made up the \$1.8 billion paid out in bodily injury claims during the last actuarial year will be passed on to consumers in the form of enhanced benefits, which is what insurance is meant to do.

The Ontario motorist protection plan also deals with the issues of rising automobile repair costs and road safety. Under the ghost car program, unfair dealings by repair shops will be dealt with, while the no-fault physical premiums being charged to a car owner will better reflect his exposure since the maximum value of the vehicle will be the maximum value that the insurer will be responsible for. Also, it is important to note that the plan's increases for traffic convictions and the more serious charges of impaired driving will act as a deterrent to such behaviour, and therefore will make the roads safer.

Finally in my presentation may I use this opportunity to address specific northern automobile insurance concerns. Going back to the insurance principle regarding the probability of

large numbers and the assessment of risks, that risk is at its largest in southern Ontario where the greatest percentage of Ontario's six million drivers reside. Inversely, the risk is the smallest in northern Ontario where a certain quality of lifestyle does not expose us to the bumper-to-bumper rush hour conditions that they deal with. I appreciate that under the threshold no-fault plan, northern Ontario will on the average not receive any premium increase when it comes into effect. However, in subsequent years it is hoped that the northern premiums will more closely reflect northern experience and that our subsidization of southern drivers is reduced.

I have also some concerns regarding the functioning of the about to be created insurance commission, which will play a most important role in overseeing and regulating the new system. It is certain that the calibre and the ability of those who will be operating the commission will reflect the Ontario motorist protection plan's success, so that disputes can be resolved quickly and fairly ensuring that the new system is not abused by either insurers or insureds. Again, I would hope that northerners would continue to have input into the creation and operation of the commission since we do have unique needs that are best addressed by those who live here.

In conclusion, the driving force behind the movement towards threshold no-fault automobile insurance is the affordability of the product along with the concern of getting more effective medical rehabilitation and income replacement benefits into the hands of the claimants faster than presently experienced by the adversarial system.

Following its implementation, insurers will be more able to assess the risks and automobile premiums will stabilize. The marketplace will then be able to return to a more competitive and responsive climate whereby the insured will have the choice to deal with whom he chooses. As in any time of significant change, there will be continued improvements to the product of threshold no-fault insurance and there will be problems to deal with. Undoubtedly this committee through its hearings has identified some of those areas requiring modification, which can be built into the new plan close to the existing premium levels.

Again, the industry will provide whatever system the government decides the consumer is willing to pay for with the end result hopefully being a strong, healthy and innovative marketplace that continues to offer a stable and effective

product at an affordable price, which is what automobile insurance should be all about.

Mr McClelland: Thank you, Mr Smith, for being here with us today. There are two points that I want to touch on very briefly; one you may not have any data on and I fully understand if you do not.

You mentioned the possibility of people topping up. We are undoubtedly going to hear from people representing groups, as we have in the past—I think in particular of the Ontario Secondary School Teachers' Federation, which will be here this afternoon—that will suggest that the net \$30,000 will not be sufficient as provided under the proposed plan. Do you have any idea in terms of layering—let's just say by way of example—going up in increments of \$10,000 from the \$30,000 net to \$40,000 to \$50,000? You may not have that and I understand. I just wonder if you might be able to help us with that. It is probably more appropriate coming from the insurer and not the broker.

You may want to comment on that now, but my second point is with respect to the first-party-pay provision of the proposed legislation. We have had some discussion with respect to the consumer's perception of who is serving him or her in terms of paying automobile insurance. As it presently stands, I pay you as a broker the money and you go out and actually buy the product for me elsewhere. What advantage do you see and what do you think it is going to obtain ultimately to the consumer as a result of being put on a first-party-pay basis? As a broker who is now dealing on a first-party-pay basis, how is that going help you in terms of your relationship with the consumer?

A little bit of an aside to that or a supplementary to that: I think there will be some streamlining in insurance. Obviously right now you want to have as many insurance companies as possible because there are a lot of people you cannot cover and you have to shop around.

Mr Smith: Right.

Mr McClelland: Do you think it is more efficient? Is the first-party-pay basis going to allow the insurance company, I suppose, to be more competitive? I do not say this in a disparaging way. Are some of the marginal or less than efficient companies going to perhaps fall by the wayside and everything? Ultimately you are going to have more efficiency in the system.

Mr Smith: I will try to answer those questions. First of all, in regard to the \$30,000 level, I understand that level was arrived at

because it represented between 80 and 90 per cent of what people earn in this province. It was considered to be an accurate figure. To answer your question about whether or not I have seen any figures regarding buying additional coverage, no, I have not, but I would again feel that the competition and innovation within the free-enterprise system will produce products that will best serve the consumer and the driver.

With regard to the broker advantage, first of all, I think it is a perception of the driving public that his contract is with his broker more so than with his insurer, even though contractually it is with the insurer. The broker is the one who has the volume with the companies and therefore has the influence with the companies, who knows exactly where to go when there are problems.

If there are delays, certainly the insurance commission has a very strong role to play in this process. I think the broker is the one who is able to solve those problems. The consumer certainly benefits from that relationship, and in terms of paying out first-party benefits, if there are any delays, I think he has somebody to go to to sort them out for him, and I think that is an advantage.

With regard to the efficiency, again I think I touched on that. The innovation of the marketplace and the education that the brokers will bring to the marketplace will best serve the driving public, and I think it is more efficient. I do not know if that answers your questions or not.

Mr McClelland: It helped.

1100

Mr Solá: I was going to make this statement to the previous delegation but we ran out of time. The opposition continually equates the right to sue with the right to compensation. The way I look at it, the right to sue is the right to possible compensation. Does anybody ever lose in a court case? I find it inconceivable that you take a lawyer and automatically you get a payment. In your experience as a broker, what is the percentage of people who lose cases and therefore get nothing?

Mr Smith: Again, in my experience as a broker, quite often when the claims occur and it gets into that system the broker sees the claim payout, but he is not really familiar with what has gone on. From an Insurance Bureau of Canada perspective, I think one third of accidents is the figure that has been brought out where people who are not at fault therefore have no access to the courts or are not indemnified beyond the inadequate accident benefits. I do not pretend to

have that information you are asking for, but I am sure it can be made available.

Mr Solá: I am interested to see if the insurance companies ever win one of these cases, because I wonder why they would protract proceedings as they do.

Another statement you made was that the north subsidizes the south in driving premiums. Could you expand on that a bit and tell me to what extent you feel drivers in the north are subsidizing drivers in the south with their rates.

Mr Smith: The general figure I have heard is that we pay approximately 75 per cent of liability premiums that are being paid in, say, Toronto. I know we do not have the same liability exposure as exists down in Toronto because of traffic congestion and people, again using the theory of large numbers. I think the principle of insurance is that we are part of the whole, but what I would like to see is perhaps a larger increase in Toronto and a smaller and more stable increase here. I think that is fair. Just going by our firm and other brokers I know, our loss ratios are all intact yet we are being restricted by the marketplace because of what is going on from a provincial perspective.

Ms Oddie Munro: The relationship between the Facility Association as it currently stands and the intent of the bill is to not condone insurers who attempt to write business where they know the insured has collateral benefits and to ensure that those people who most need to be covered are covered and are not put in along with other people who are definitely at risk and therefore have to go to the Facility Association. I wonder if your industry can respond to those accusations. What we want is for no one to suffer unduly or be discriminated against because they do not have collateral benefits.

Mr Smith: That is right, but collateral benefits in one sense go against indemnification because collateral benefits mean that you are getting reimbursed twice perhaps. I think again the principle of insurance is that indemnification does not include collateral benefits unless you are leading up to one point. You do not profit from a loss, although in bodily injury there is no such thing as profiting.

If I could answer your questions about the Facility, the Facility is certainly a concern. The tight marketplace is definitely not enhancing what is in the Facility. I think when we stabilize premiums and we stabilize the marketplace, then the Facility will depopulate and that is very much the concern of brokers.

The Chair: Mr Kormos, Mr Pouliot, up to eight minutes.

Mr Kormos: You and I are going to disagree about probably darned near everything—

Mr Smith: Hey, that is democracy.

Mr Kormos: —except I have to give you guys credit and I really do tell you that credit is due to you because when you pay off your friends in government, you do it with hard cold cash. You do not muck around with fridges and paint jobs.

Mr Smith: Mr Chair, can I respond to these as he goes?

The Chair: That is up to Mr Kormos, whether he needs an answer or whether he is making a statement.

Mr Kormos: I will let him respond. Let me just present the facts. Over \$100,000 of Ontario drivers' premiums was paid by the insurance industry to Liberal candidates in the 1987 election. Go ahead. Respond to that. Is it an incorrect figure? Am I too low?

Mr Smith: Again, democracy is supporting what your convictions are. Is there an illegality involved in political contributions?

Mr Pouliot: You are needing power, so you turn around and you give \$100,000. That is what he saying. Where did it come from? The premiums, right? Your loss premiums? That is what he is asking.

Mr Smith: Again, it is a democratic right to support what you believe in.

Mr Kormos: Fair enough. I have no doubt you believe in a party that is going to bat for the insurance industry like—

Mr Smith: No, I believe in free enterprise. It is different.

Mr Pouliot: You sure do.

Mr Smith: I do. Absolutely.

Mr Kormos: The auto insurance industry in Ontario said it lost \$142 million in 1987. John Kruger and the Ontario Automobile Insurance Board said: "No, they did not lose money in 1987. As a matter of fact, they made some \$55 million." Who is lying? John Kruger or the insurance industry?

Mr Smith: That is not my understanding of what he said. I understand that those figures have all been certified—the \$142-million figure. There is no question that in the last three years the auto insurers in this province have been operating at less than a break-even point after investment income. That is why there is no stability in the marketplace right now.

Mr Kormos: I will run this one past you again. The auto insurance industry says that it lost \$142 million in 1987. The Ontario Automobile Insurance Board indeed indicated in its report that the auto insurance industry did not lose money in 1987; rather it made money, some \$55 million. Now are you disputing that the auto insurance board said that or are you suggesting that they lied when they said that?

Mr Smith: Again, I am familiar with the \$142-million figure. I am not familiar with the other figures.

Mr Kormos: Of course you are not because you have not read the OAIIB report.

Now, Mr Justice Osborne and Don McKay, the general manager of the Facility Association, say that this legislation is going to force more and more people into the Facility Association; among others, senior citizens, unemployed people, seasonal workers and small business people. The reason is because they do not have employer-provided disability programs. In view of what you said to us today, especially in response to Ms Oddie Munro's questions and comments, are Mr Justice Osborne and Don McKay, the general manager of the Facility Association, lying or merely incorrect about what they say about the impact of this legislation on seniors and others being forced into Facility?

Mr Smith: Clearly the industry is committed to making this work. They understand that funnelling a higher percentage into Facility is not making it work and that the private marketplace will be taking its share of responsibility. If they are not, you can bet brokers will be putting pressure on them.

Mr Kormos: I will ask you again. Mr Justice Osborne said that and Don McKay of the Facility Association said that. Are they merely incorrect or are they lying when they say that is what is going to happen, that more and more seniors, among others, are going to be forced into Facility as a result of Bill 68 being passed?

Mr Smith: From a broker's perspective, I do not think that will occur because of the commitment of the industry to make this program work. That commitment does not come from putting these people into the Facility unjustifiably.

1110

Mr Kormos: Do you know why the government will not release secret documents that contain actuarial calculations about the impact of this legislation on the profits of insurance companies, in particular the 23 documents that lawyer Mandel requested under freedom of

information? Do you have any information about why the government will not release those so that the public can examine them?

Mr Smith: I am not privy to that, no.

Mr Kormos: Do you know what went on in the private meeting between the Premier and executives of leading insurance companies in the Premier's office immediately following the announcement of rate controls?

Mr Smith: What is your point? That private enterprise is dishonest?

Mr Kormos: No. I am asking you whether you know what went on in that private meeting between the Premier and executives from leading auto insurance companies in Ontario after the announcement of rate controls. Do you know what went on at that meeting?

Mr Smith: I was not at that meeting. What was it?

Mr Kormos: Do you know why the Premier of Ontario would not accord citizens' groups and others opposed to Bill 68 the same access to his office? Do you?

Mr Smith: Why would you think that I would know that? I am coming from a broker's perspective. Upon what I perceive the problem to be, it is price, it is stability of the marketplace, it is a product that will respond quicker and fairer, and it is dealing with escalating costs and an affordable premium. That is the problem.

Mr Kormos: Why is it that not only lawyers and organizations which are probably primarily composed of lawyers are opposed to this legislation, but the trade union movement is opposed to it, teachers are opposed to it, police officers are opposed to it, John Bates of PRIDE is opposed to it, rehabilitative personnel, by and large, are opposed to it? Why is it that, by and large, the only people who come before this committee in support of this legislation are insurance industry personnel or insurance brokerage personnel? Why is that? Are you right and everybody else is wrong?

Mr Smith: No. I think it is because they have been inundated with the negative side of what is going on and not the positive side.

The Chair: One minute, Mr Pouliot.

Mr Pouliot: I am very pleased to meet another fellow—we will do this together very candidly, Mr Smith, if I may—who is a real advocate of the free enterprise system. Time will not allow me to debate and I would really like to listen to your comments.

Mr Smith: Sure.

Mr Pouliot: I have read a great deal about cartels and about monopolies, mergers, take-overs, the element or the component of competition in the marketplace.

Mr Smith: Eastern Europe.

Mr Pouliot: Under other auspices, if I may, we could share some very, very good moments.

I was intrigued by your definition of the north subsidizing the south. I can relate to that, Mr Smith. I am the only northern politician here. I never have two bad days in a row—it is a secret we will not share with anyone else—for on the second day I dump on the greater Toronto area. It has worked for you too. I know we have a lot in common, you and I. I do not know what they do in Toronto. I imagine they dump on Bay Street and Bay Street dumps on Wall Street and we can go on and on.

Mr J. B. Nixon: We pay higher taxes.

Mr Smith: We just want to be considered fairly and have a voice for that.

Mr Pouliot: You have said that northern drivers by virtue of the less hazardous conditions—I travel with a moose signal on my car, I take the Caramat Road, etc—our incidence of accidents is less than Toronto, but over the years, under the auspices, with respect, of the great free enterprise system, we have been allowed to subsidize the drivers of the north. How will this change under the proposed legislation?

Mr Smith: Again, the same principle of insurance is not being changed, the probability of large numbers whereby the premiums of the many pay for the losses of the few. My point is that perhaps the increases in Toronto should be higher than the increases in the north, because from a liability perspective it is not the same exposure.

The Chair: Thank you for the presentation. We appreciate it very much.

From the Port Arthur Clinic, Dr Rintamaki. The clerk has distributed copies of your presentation. We have up to half an hour, however you want to use it. If you would leave us some time for some questions, comments and discussion, we would appreciate that as well. Please proceed.

DR LINDA J. RINTAMAKI

Dr Rintamaki: My name is Dr Linda Rintamaki. I have been a practising family physician for over 10 years in this area. I am well acquainted with personal injuries due to motor

vehicle accidents, having spent thousands of hours on duty in the hospital emergency departments and also giving ongoing care to my patients in the office as they recover from these injuries. I would like to give you some examples of patients I am presently following who are victims of motor vehicle accidents.

Victim 1: The first patient I am discussing is a self-employed cosmetologist who was injured in a motor vehicle accident over one year ago. Her vehicle was struck from behind while parked at a stoplight. Since the time of her injury she has suffered severe neck pain, chronic headaches and low back pain. Her symptoms are exacerbated every time she goes to work by the static posture she requires in her employment. She has had endless hours of physiotherapy, takes medications and visits a chiropractor. All of these measures give only partial and temporary relief.

As a result, she has had to reduce her working hours and for periods of time she has had to take some time off, which also reduces her income. She is under financial and emotional stress because she is losing clients and now faces the prospect of losing her business. Incidentally, I saw this patient several days ago and she is becoming increasingly depressed due to the continued severity of her pain. She now feels that the loss of her business will become a reality.

Victim 2: The second patient is a self-employed carpenter whom I am following. He was injured in a motor vehicle accident about one year ago. His vehicle was involved in an accident where the other motorist made an illegal turn. Since that time he has had constant severe neck pain, which radiates down his right arm. He is right-handed. Can you imagine the excruciating pain he experiences as he uses a hammer or puts drywall in place? He also takes medication and undergoes physiotherapy. He attempted to find relief by reducing his working hours. This did not help and presently he has had to stop working altogether. He has a family to support, but faces a very bleak future.

Victim 3: The third patient is a secretary who was a passenger in the front seat of a vehicle which was hit head-on by another driver who was at fault. This accident occurred over two years ago. She suffered a head injury and severe neck and low back pain. She has required daily physiotherapy and medications.

This lady is highly motivated and returned to work three months after her accident. However, while she continued working she required treatment on a regular basis, especially physiotherapy. It has been almost three years since her

accident and she still suffers daily headaches and chronic neck and low back pain, especially towards the end of her working day. She is representative of the many motor vehicle accident victims who suffer sleep disturbances and require sedation at night.

These three victims are all in their mid-30s and 40s and in the prime of their working lives. Under the new legislation they would not get any compensation for the pain, suffering and hardships they have had to endure. The \$140 a week now paid certainly would not cover groceries for many families, and although the \$450 figure under the new legislation is an improvement, it certainly would not help the self-employed, the people I have described. Mortgages, hydro, telephone, groceries and other bills could easily exceed this amount. I also fail to see an adjustment for inflation built into this figure.

If a victim has sick-leave benefits or disability insurance, these resources must be exhausted before the new legislation permits payment of any wage loss. Many of the self-employed might lose their businesses due to the long recovery periods required. If the injury is chronic, the scheme would in all sick leave and accident insurance benefits being exhausted by a motor vehicle accident, so that no benefits would remain should the victim suffer a later disability due to other causes.

1120

The victims I have described would not qualify under the new legislation as having catastrophic injuries. However, these patients who go on to suffer for many years from injuries which disrupt their lives and the lives of their families would receive no compensation under this new legislation.

I would like to spend a few minutes on how this affects the Ontario hospital insurance plan. At present, OHIP receives anywhere from \$45 million to \$50 million per year from the insurance companies to help cover the costs of medical care to accident victims. When this arrangement is cancelled under the new plan, where will OHIP make up the difference, or are we looking at more cutbacks in our health care system? OHIP loses \$50 million and the insurance companies are given a \$50-million annual gift. Imagine what this \$50 million could do for our health care system.

In Thunder Bay alone, we have shortages of both chronic and acute care beds. Presently, there are as many as 30 patients in one hospital alone waiting for placement in a chronic care facility. These 30 patients are occupying beds

which are desperately needed by acute patients who are lying on stretchers in the emergency department and also by those patients awaiting surgery. Day after day I walk through that emergency department and see patients lying on stretchers waiting to get beds on the floor. We desperately need those chronic care beds.

Thunder Bay could use two CAT scanners, not one, and we could also use a magnetic resonance imager. Patients in northwestern Ontario have the option of going on a waiting list of about six months in Toronto to have an MRI done or travelling to the United States for this service. As you can see, the loss of this \$50 million is not going to help our present health care system.

I have one last patient I would like to describe. This self-employed accident victim was struck from behind about two years ago while waiting to make a left-hand turn. As a result of this accident, she suffers continuous pain in her neck and her right arm, as well as numbness in her right hand. She is right-handed and her occupation requires her to do a lot of writing, as well as physical use of her arms.

The nature of her work increases her pain to the extent that she has had to reduce her workload. She has undergone physiotherapy for the greater portion of 24 months and requires medication for pain control and to alleviate some of the sleep disturbances. She has also suffered a substantial loss in income. She has been referred to a number of specialists for diagnosis and treatment of the injuries.

I am the patient in this final example. I feel as though I have lost two years of my life because I have not been able to carry on with many of the normal, day-to-day activities, such as the household chores. My husband now has to carry the groceries, carry the laundry, do some of the cooking and walking the family pet because I am limited by the pain in my right arm. I have also had to give up leisure activities, such as swimming, aerobics and tennis.

I have not been able to carry a briefcase on my right arm for two years, and I have had to give up working in the operating room assisting and also I have had to give up emergency room work. I have had to reduce my office hours because I cannot tolerate writing for any length of time. In fact, my husband had to type this brief for me because the pain in my right arm limits the amount of time that I can type or write.

My personal experience has given me a lot of insight into the plight of the accident victims and I know what it is like to experience pain that seems never-ending. I strongly believe that all

accident victims should be compensated for pain and suffering. I also strongly believe that no-fault legislation is not the direction the Ontario government should be taking.

The Chair: Thank you for your presentation. I have either Mr Pouliot or Mr Kormos, Mr Callahan, Mr Nixon, Ms Oddie Munro for up to 10 minutes.

Mr Pouliot: I will be brief. Doctor, I think everyone on the committee certainly shares your sorrow, and also as a foot soldier, if I may use that terminology, as a person who sees first hand—actually the first person to be confronted or exposed to the victims of motor vehicle accidents.

I should apologize for being somewhat appalled and shocked at the presenter. This is not the committee I am assigned to. I am the vice-chairman of the public accounts committee, which is entirely different from this committee, both in decorum, good manners, presentation, tone, etc. Also, my role is not that of critic. Mr Kormos is our critic in this instance. I have three critic roles, but that does not interest anyone. So I am appalled and shocked to find out that things really add up. I am trying to develop a scenario and maybe you can help me.

There is \$143 million that is taken from the three per cent premium that is going back to the insurance company. They are going to pocket that, and with the OHIP they will pocket about \$143 million, plus they are going to come up with an eight per cent premium increase, if you wish. What you are telling me here, and I am quoting you verbatim, doctor—I have listened intently, I have been watching closely—"Unless the injuries are permanent and catastrophic, you do not get any compensation."

So when you talked about the trauma that was experienced, the pain, the nausea, the anxiety, the depression, you do not get a nickel, you do not get a dime. You get zilch. You do not get any compensation for that. As a consumer, that scares me. That really forces me to operate defensively. Again, I wonder why people would do that to me. I do not want you to say this, that I have immunity in this committee, but I think it transcends political affiliation or belief. I mean, why would someone want to do this to me? I want to pay a fair buck but I want value for money as well, and I am not, with those four examples. Those are real people. Right?

Dr Rintamaki: Yes, these are real people.

Mr Pouliot: Thank you.

Mr Kormos: The line that is going be used is that if we do not deny people, like the victims you

talk about here, people like yourself, just, fair compensation, then the premiums are going to go up. The premiums are going to go up 30 per cent and 35 per cent, except that the government refuses to challenge the insurance industry for the figures that the insurance industry persists in releasing that show consecutive losses, because the last time any investigation was made was by the Ontario Automobile Insurance Board—which demonstrated in this Orwellian sort of way, this newspeak sort of way, that when the insurance industry says "We lost money," what it means is "We made money." I guess a really fearful scenario would be one where the insurance industry announced that indeed it made money. Then we could conclude that it lost money.

But there has been such a loss of credibility on the part of the insurance industry, and that is enhanced by the rationale that it attempts to use to justify this legislation, just to say victim 4—you yourself, madam—in all likelihood would never pass the threshold.

Dr Rintamaki: No, I would not. That is why I am here.

Mr Kormos: The other thing the government talks about is the no-faults, which we have had in this province for a long time. Now, I see a big distinction—and I will ask you this.

This is a far more serious injury than you might get from attempting to move your washing machine in your basement because you were loathe—I was loathe to pay the \$25 when they delivered the new washer simply because I do not make that much money. If you are loathe to pay the \$25 to have them install it and you try to move it yourself, you rupture a disc in your back and you get a sciatic inflammation and the pain that is associated with that. I think people are capable of saying, "Look, that was nobody's fault but my own."

Dr Rintamaki: Exactly.

1130

Mr Kormos: Nobody likes to have to be in pain. Sciatic pain can be very painful, but I am appreciating that it is not like the type of pain that could be associated with many of the trauma injuries that develop in car accidents. I am confident that people are capable of saying, "That was my fault."

Dr Rintamaki: Exactly.

Mr Kormos: Anybody in our society should be able to expect a competent level of medical care and rehabilitative care, if he cannot afford it, and regardless of whose fault it is, even if it is his fault, that he inflicted the injury on himself.

But I say that is a far cry from getting hit by a drunk driver or merely a careless driver, a negligent or a reckless driver, because then it is not my fault. At that point, the distinction becomes very clear. At that point, in so far as I can see and from what I hear you saying, people say: "No, wait a minute. When I cause the injury or when I recognize that it is mere happenstance, I can live with that. I can understand that, but I cannot understand why the government would protect the careless driver and/or his insurer to the point where that careless, reckless or drunk driver does not have to accept even the minimal level of responsibility for what he or she has done to me," in this case, to you.

Dr Rintamaki: That is right.

Mr Kormos: Let's not talk about me, "What they have done to you." We are talking about lost opportunities.

Dr Rintamaki: That is right.

Mr Kormos: We are talking about lost opportunities, which by their very nature, can never be regained. You can never relive the last two years of your life and you can never relive the sleepless nights, the tossing and turning or the numbing from the pharmaceuticals that you have had to take.

Am I correct when I say that people in our society can make that distinction between being at fault and not being at fault?

Dr Rintamaki: They certainly can. The people I have been following, the first three victims I described are that way. They are very reasonable people and I do not think they are looking to sue anyone to the hilt. They would just like to be able to have some compensation for what they have gone through.

Mr Pouliot: They want to be like the others.

Mr Kormos: Yes, you raise that.

Mr Pouliot: Doctor, what you are saying is they simply want to be like the others.

Dr Rintamaki: Yes. I think they would like to be able to go on with their lives and carry on, not lose their businesses, not cause this hardship to their families and to be able to carry on.

Mr Pouliot: Tell me, with due respect, you are not having any luck with your ministers. If my memory serves me correctly, Murray Elston was the guy who legislated you back to work under Bill 94. Now this is the same guy again. You watch it. He may move to your riding

These are real cases. I guess they reflect more than hypothetical situations, if you wish. If someone was intending that way, like smoke and

mirrors or the world of make-believe—we are not privileged, if I may, but we are blessed this morning with presentations of ordinary people. This is the number in the book; this is the face in the crowd. These are people who are, with respect, run of the mill, for lack of better terminology. These are your everyday people who are asking, as I said, for a chance to see the sun rise again tomorrow.

It is not their fault they got hurt. That is all they wish. They have jumped through every loop. They have fulfilled every criteria and most of them are assuming that they are buying protection.

Dr Rintamaki: That is right. Why pay for it if you are not going to get it?

Mr Pouliot: One last question. Is it your experience that some of those people, it may not be these four in this case, believe that there is such a thing as a meat chart? For instance, if they get two broken ribs, they will get \$5,000; if they get a broken leg, they may get \$8,000. Are they aware that there is no such thing?

Dr Rintamaki: I do not believe they are aware there is no such thing.

Mr Pouliot: Thank you.

The Chair: Mr Callahan, Mr Nixon, Ms Oddie Munro, up to 10 minutes.

Mr Callahan: First of all, you say that you are the last patient. How long ago did your accident occur?

Dr Rintamaki: February 1988.

Mr Callahan: Where are you at in the proceedings? Hopefully they have issued a writ to protect your claim.

Dr Rintamaki: Where am I at?

Mr Callahan: Yes.

Dr Rintamaki: I have seen a number of specialists and there are some conflicting opinions as to what the diagnosis is. I still go to physiotherapy regularly. One physician thinks perhaps I may need surgery in the future. Another physician wants to be more conservative. I feel as if I am caught in the middle. I am not really sure where I am going to be a couple of years from now or whether I am ever going to be able to work full-time again. I have no idea.

Mr Callahan: Would you not agree with me that a good deal of the anxiety that people who are involved in accidents experience is the fact of wanting to get it over with, get it resolved?

Dr Rintamaki: I think they want to have it resolved. They want to be better. They want to be back doing the things they were doing before.

Victim 1, whom I saw a few days ago, said that she is becoming increasingly anxious and depressed because she just feels that she is losing ground. She is not getting better. She is self-employed and may lose her business.

Mr Callahan: Have you given evidence in motor vehicle trials? Have you been called upon to give evidence?

Dr Rintamaki: Believe it or not, no, I have not.

Mr Callahan: From your experience with patients who have suffered in motor vehicle accidents, I gather you have run into the odd few who got nothing, because either they have lost their case or they could not afford a lawyer or they did not pursue the matter.

Dr Rintamaki: You know, I really cannot answer that. A lot of times patients do not volunteer that sort of information, and I do not necessarily ask it, so I really do not know.

The Chair: Just for the chair's clarification, in any of the four cases that you cited, have any of them launched legal actions?

Dr Rintamaki: I know for a fact that three of the four victims are seeing lawyers.

The Chair: And in your case, you have launched legal action against the person who struck you.

Dr Rintamaki: I felt I had to protect myself.

Mr J. B. Nixon: Thank you very much for appearing today. I wanted to talk to you about the elimination of the OHIP subrogation agreement. As you know, like the premium tax, those payments were to the government. Whether it was to the OHIP program or to the Treasurer, the premium tax came from the premium revenue received by the insurance companies. Do you agree with me on that? I mean, they had to pay it from something.

Dr Rintamaki: I am not sure exactly what you are saying.

Mr J. B. Nixon: I am saying that when the insurance companies paid the premium tax and when they paid the OHIP subrogation agreement, they paid it out of the premiums they received from consumers.

Dr Rintamaki: Oh, I see. Okay.

1140

Mr J. B. Nixon: Right now, the government, as you correctly pointed out, has eliminated the premium tax and the OHIP subrogation agreement, which means that the insurance companies do not have to pay \$143 million to the province of Ontario.

The corresponding side of that, I want you to know, is that prior to operating in Ontario, any insurance company has to file its rates with the Ontario Automobile Insurance Board—to become the Automobile Insurance Commission. In the course of filing those rates, they have to demonstrate that the elimination of the three per cent premium tax and the OHIP premium payments has resulted in a reduction in premiums in the hands of the consumers. If they cannot demonstrate that, in other words, if the elimination of those payments means a reduction in premiums, then the rates will either be ordered lower or they will not be allowed to write auto insurance. So it is not really a gift to the insurance companies. If anything, it flows right through to the consumers. I wanted to clarify that for you.

Dr Rintamaki: Okay.

Mr J. B. Nixon: I agree with you that the money for OHIP has to come from somewhere. It is going to come from all the taxpayers, who we believe have a real interest in everyone's rehabilitation, everyone's good health and return to society in a productive way, to the family and so on and so forth. It may mean that the \$1.4-billion additional money that was put into the health care system last year will have to go up another \$50 million this year, but it is not to say that money is not going into the health care system. There was another \$1.4 billion last year. In the budget coming up this year, I think everyone expects increased commitment to health care. I wanted to clarify that for you.

Dr Rintamaki: Okay.

Mr J. B. Nixon: You cited four cases to us. I think it was important that you did that and brought them before the committee to consider when it considered the compensation side of this program. Let me cite a fifth case to you.

A student is driving home from university and has a pre-existing back condition of chronic pain. His car is cut off by a speeding driver and he is thrown off the highway and the car is virtually demolished. Finally, someone stops and calls the police and so on. That student is thrown out of school because his back condition is now ruptured; it is now a ruptured disc. He is out of school and flat on his back for four months.

He may have a family. He does not have anyone to sue and he does not get any no-fault loss-of-income benefits because under the existing system students do not get anything. He does not get any long-term care benefits because under the existing system there are no long-term care benefits. Basically, it is incumbent upon either his family, parents or his wife to support and care

for that person. That is the type of person who falls through the system presently and gets nothing. That is one of the real concerns we have had in considering this legislation. How do you deal with those people who get nothing?

Mr Kormos: How do you deal with dishonest hypothetical scenarios?

Dr Rintamaki: Yes.

Mr J. B. Nixon: Well, Mr Kormos, if you want to challenge the honesty of it, I can tell you who it occurred to. It occurred to me. If you want to challenge my integrity, do it elsewhere.

Mr Kormos: Listen. Your integrity is in great doubt across the province.

The Chair: Order. Mr Kormos, order.

Mr Kormos: Holy zonkers. They have the motor vehicle accident claims fund to go after and you know it.

Dr Rintamaki: I personally have not had a case like this. I agree that would be a disastrous kind of situation. I would think that there should be some compensation for this patient in some way.

Mr J. B. Nixon: That is what we are trying to do.

Dr Rintamaki: Yes. But under the new legislation—you might be able to give me the figures—what is it that a student would get? To me, it does not sound like very much.

Mr J. B. Nixon: Their loss-of-income would be \$185 per week.

Mr Pouliot: All that? Wow.

Dr Rintamaki: I think that is terrible. You cannot even feed yourself on that, let alone all the years you have lost in your life in terms of lost years of schooling. I think that is negligible. It should be much, much more than that.

Mr J. B. Nixon: Thank you.

The Chair: Ms Oddie Munro for a minute.

Ms Oddie Munro: There is a relationship between pain and the timeliness of rehabilitation. Under this current scheme, rehab benefits are accorded. In the current situation I do not believe people have access to rehabilitation benefits under no-fault insurance. I am wondering if you would care to comment on that, because we think it is a very positive side of the bill.

I am saying there are some people who waited for months and years, if they chose to sue, before they ever got into the courts or had access to any kind of rehab. I am not privy to all the details of these cases, but I dare say that if they had not received rehab fairly quickly, their pain would

have been even more pronounced. I can tell you that pain was an actual factor in considering rehab benefits. I am wondering how you would respond to that.

Dr Rintamaki: Actually all of these patients are getting rehab, but it is paid by OHIP. They are all going through rehabilitation.

Ms Oddie Munro: In the current access then to rehab, I believe they would have greater access to a wider range of rehab without presentation necessarily of the case for rehab more quickly and more timely. Certainly any statistics we had indicated that many, many people were being denied or did not take the opportunity to access appropriate rehabilitation through health care practitioners or whatever, through the hospitals or clinics. If I am wrong, then maybe we should not even have looked at it from all the aspects of rehabilitation.

Dr Rintamaki: Yes. I am wondering why that was ever brought in, because the patients I see are all going to rehab and to physiotherapy departments in the city. What is limiting is the fact that we do not have enough of them. Maybe that money should be going to building new facilities and hiring more therapists because they have access to what we have available right now.

Mr Kormos: Elinor feels real bad about it.

The Chair: Thank you, doctor, for your presentation.

Mr Bell, you have 15 minutes to use as you see fit. If there is any time left, we will entertain some questions, discussion and comments. Please identify yourself for the benefit of Hansard and then proceed.

WILLIAM R. BELL

Mr Bell: My name is William R. Bell. I am an employee with Canadian Pacific Forest Products. I am a bushworker. I am going to tell you some plain facts. Mr Pouliot here I recognize and the rest of you I do not. I make approximately \$1,000 a week. That is before taxes. I hope after the next contract to make quite a bit more than that.

One question is, when I drive those 200 miles twice a week to get to my workplace and get wiped out by an extra-long semi or something like that and manage to come out alive, how much is my insurance company going to pay me?

My company has a plan for me right at the present that pays me \$400 a week if I am on sick leave for one year, and after that, I guess we will go on half benefits for a lifetime disability. Right at the present I am on sick leave. It is taxable. I

pay \$79 a week off that \$400 in tax. What is the insurance company going to do for me? That is one question.

The Chair: Maybe we will just ask for a brief response from officials from the Ministry of Financial Institutions.

Mr Endicott: I am just trying to get your facts. You earn \$1,000 a week?

Mr Bell: That is the net wage right now, with benefits and cash and bonuses and stuff like this.

Mr Endicott: You said you get \$400 a week from your disability plan.

Mr Bell: For one year, and if I am totally disabled, I get half that after that.

Mr Endicott: So you would get \$200 after that.

Mr Bell: And it is taxable.

Mr Endicott: Okay.

Mr Bell: I want to know the bottom line. What is my wage going to be if I cannot work any more?

Mr Endicott: Okay. In the first year, the way it works is that it is 80 per cent or \$450, which means you would get an additional \$400 a week. That would bring you up to \$800, which would be 80 per cent of your total wage. In the second year, because your disability goes from \$400 to \$200, you would get \$450, because that altogether is \$650, which is less than 80 per cent of your wage.

The Chair: And the \$450 is not taxable.

Mr Endicott: Yes. Both the \$400 and the \$450 are not taxable.

Mr Bell: But they are taxable now. What I am paying is taxable.

Mr Endicott: Yes.

1150

The Chair: Your current disability income would be taxable from the plan that you have now. What he is saying is that the \$400 and the \$450 in the second year would be topped up to bring you up close to 80 per cent of your \$1,000 and is not taxable. It is my understanding, depending on how long you are disabled, that \$450 could go as long as a lifetime. Is that correct?

Mr Endicott: That is right. It depends on—

Mr Kormos: Three years.

Mr Endicott: After three years, as with his own disability plan, if he is totally disabled, it would continue for a lifetime.

Mr Kormos: Otherwise the maximum is three years.

Mr Bell: May I make a point? One of the things the provincial government should look at is, instead of having 12-hour law enforcement on this great Dominion highway we have across Canada, especially in northwestern Ontario, that we have 24-hour law enforcement, especially in traffic. I invite any of you to come with me now—I have an almost-new truck—and drive the 100 miles where I turn off to go to work and come back in a snowstorm. You will have a vastly different view of what the hell life is all about on the highways here. I want due process. If somebody does wrong to me on the road, I want due process, and if I do something wrong to somebody else on the road, I want the same thing to fly if I am in the wrong. That is all I have to say.

Mr Kormos: Hold on to your wallet, Mr Bell. They are going to pick your pockets.

Mr Bell: You may pick my pocket until the next election, but you sure as hell will not pick it after.

The Chair: Thank you.

Mr Tornblom, you have 15 minutes to make a presentation and then allow questions, comments and discussions, if there is time. Please proceed.

ROLF TORNBLOM

Mr Tornblom: My name is Rolf Tornblom. I am not representing anybody. There are just a couple of points that I felt have not been discussed until just the previous witness. As I understand it anyway, people have to liquidate their sick leave or disability insurance before they are entitled to any loss of income. I feel this is very unfair.

I am not employed at this time; I am retired. But when I was, I worked for the federal government and we had sick leave, which was full pay for loss of wages. There was no limit on how much you could accumulate. Some people accumulated a great deal. I left over 300 days in the bank when I retired and got nothing for them. But that is fine, I was covered. That is what I saved them for, so I had that coverage.

We also had disability insurance which kicked in after all your sick leave was used up or a period of 13 weeks had expired since you were unable to work. This continued as long as you were unable to work or, in some cases, it probably was for life. It was 60 per cent of the wages you were making on the last day on the job and, of course, these were taxable.

This proposition or plan that a person has to use up these credits before he is entitled to any loss of income, I think, is absolutely wrong.

These were conditions of employment as far as sick leave was concerned, and if disability insurance was taken, you had to pay a premium for it. They were meant to cover illnesses or injuries and it had nothing to do with injuries received in an automobile accident.

If somebody is at fault in an automobile accident, or not at fault in an automobile accident in particular, there is no way that he should be not compensated for loss of income. The other income he is getting or would be getting, in other words, would be underwriting or subsidizing the insurance companies, maybe off the hook for a considerable time and it could be for life. As long as he is getting this money from another plan that was not intended for this, the insurance companies who assume the responsibility to compensate people would not have to put a nickel out. I think this is absolutely wrong.

I would just like to mention also the cap that was put on the amount of income a person can be compensated for and the point of no indexation. Everybody knows that indexation is—we have to have it because what you are getting now might be worth an awful lot less 10 years from now, and no one, as I said before, who has suffered due to an accident caused by someone else, especially if he is not at fault, should be deprived of his normal income. He should not suffer financially, in any way. This is why the cap is very unfair.

These are just a couple of points I thought I would take the opportunity of presenting and I think they serve to indicate that the tradeoffs made in the preparation of this legislation were completely out of balance. It shows the government has made a very bad deal and now it is going to force it on the taxpayers of the province of Ontario.

I hope the committee will consider these things in its deliberations and that it does take to heart all the presentations being made and present them to the government, because I think it is overwhelmingly indicated that the majority of people are not in favour of this type of insurance and, whatever the recommendations are, that the government acts on them, not just push them aside, as it does in so many cases.

The Chair: Just a point of clarification before Mr Pouliot and Mr Callahan, on the disability or sick leave—I ask for a point of clarification from the staff—depending on what a contract would say, whether it is optional.

Mr Endicott: Sick leave benefits are only taken into account if actually taken. If you do not claim your sick leave, then they are not taken into account and you just get the no-fault benefits. If

they are claimed, they top up if they are less than 80 per cent, but if they are not claimed at all, then you are just entitled to the no-fault benefits.

Mr Kormos: But the disability benefits.

Mr Endicott: No, the disability benefits are treated differently. They do top up. In your example, you said 60 per cent was paid, so they would top them 60 per cent to 80 per cent.

Mr Tornblom: The point I was trying to make is that this has nothing whatsoever to do with the liability of the insurance company. It has nothing to do with it at all.

1200

The Chair: That is correct, the liability in terms of a threshold to the right to sue for either pain and suffering or other economic loss. But in a situation where your example is 60 per cent, assuming you are making \$1,000 a week, your disability income would be \$600 a week. The top-up from the \$450 would be an additional \$200, to give you \$800. Is that how I understand the process?

Mr Endicott: That is right. He did not give a specific salary, but he said you got 60 per cent, and it would be raised to 80 per cent.

Mr Kormos: So you are going to subsidize the industry.

Mr Tornblom: This is the point that I am trying to make. You should be entitled to take all your sick leave, which is full pay—in my case it was, when I was working—and now that I am retired, all my pension, and still be compensated by the insurance company.

Mr Pouliot: They pocket the money, my friend. You get nothing.

Mr Tornblom: Certainly they are just being subsidized by somebody else.

Mr Pouliot: You are right on. Let us not dream here. This is what is being done here. You have 80 per cent at the best of times. You never pick up what you have lost. You are at a loss here.

Interjection.

Mr Pouliot: I am making a point, with respect.

You are not buying protection here and your premiums will go up, as they always have. Everything else in this world goes up, but your benefits will not go up. That is not in there.

Then we begin to understand what is being done here. They get it from all sides and then you get less benefits, so they get more money and you get less benefits. It is a windfall. This is what annoys me here, because this is not a fair shake,

you see. It is not an even deck. When you get down to Toronto, all those poor people who claim they are losing money, just look them up. We will do it together. Just look up what you see there. There are banks, and then on the other end you will see insurance companies, not paved with deficits, sir, at \$1,000 a square foot. Those are paved with ordinary Ontarians' premiums.

The people want protection. We don't mind paying; it is a necessary evil, I agree, but the thing is I want to get protection. In this case, my benefits are going down, I do not have the right to sue. I pay more premiums, they collect more premiums, on the average. Nobody has said that. I pay more taxes because they are forking over \$140 million from the public purse, and I get less protection.

I mean, I know what you are saying. I worked 20 years in a mine, sir. What gives? If I would have had to negotiate a collective agreement on behalf of my sisters and brothers with this kind of intent and spirit, we would have walked. We would have withdrawn our labour, because we are thinking, "Hey, I want you to make a profit and I want to wish you well, because then we will do it together." But this is a stacked deck here and that is why we are emotional. That is why we are annoyed, because there is no rhyme or reason that anybody walks across the street here, gets run over by a truck, by a car, the person pays premiums and I end up getting less than a minimum wage because I earned the minimum wage.

People are being shackled. I might as well throw a pair of handcuffs. If I was like Mr Petroni, I would throw a pair of handcuffs over and I would say, "Come on, handcuff me," because that is what you are doing. And yet no, let us not dream here. You have no recourse.

When I go back to the small municipality where I live, Manitouwadge, and it could be anyplace, small towns, big towns across Ontario, I am telling you, people are as mad as hell—excuse the expression—because they feel, again, "Everything is going up, but I am not even indexed."

My salary is going up; you read it in the paper. My benefits went up. The teachers will tell us this afternoon. My wife has been teaching for 35 years. She says: "If I get hit by a car, my accumulated sick leave is gone"—now we are talking gratuity, but that is another story; we could talk at length—"but if I want to live like a human being, I have expenses to meet, it is not related to my sick leave, and I lose everything. I

lose everything because I get run over." Is that fair?

You can be a Tory, you can be a Liberal, you can be a New Democrat; I do not think it matters a lot. In fact, if we had a republican system here, sir, where people would go back and vote individually as opposed to walking the line and being the messengers of bad news, in this case, you would have an entirely different story. I share in your total. I pay the same premium as you do, sir, and I do not like it one bit.

Mr Callahan: I am just concerned. I am a visitor to this committee. I do not normally sit on it. I thought that automatically your sick leave would be usurped. I understand that is optional. You can decide to do it or not to do it. Is that right?

Mr Endicott: That is right. If you do not claim your sick leave, then it is not taken into account.

Mr Callahan: Okay, and the maximum you would get would be \$450, if that is 80 per cent of your wage.

Mr Endicott: Right.

Mr Callahan: So you do not have to use it if you do not want to. Let me just follow through on one other thing. Mr Pouliot and Mr Kormos there will complain about this and sort of pit the insurance companies against the people, and yet I went around this province where they were talking about public auto insurance, of which my recollection was that it did not provide a heck of a lot more. The only difference was that it was all being paid for by Big Brother and nobody out there had any involvement in it whatsoever.

I find it kind of interesting that the people who have been the most enthusiastic and sympathetic here today are the people who were proposing a public auto insurance plan on an earlier occasion. I find that difficult.

But I wanted to go back and I wanted to clarify that issue of whether you had to use your benefits, because that seemed to me to be unfair, if you had to do that. I agree with your comments.

Mr Tornblom: I am not quite 100 per cent sure what I am going to say, but when you are off sick and you have sick leave, you are going to use it, right?

Mr Callahan: Right.

Mr Tornblom: That is what you save them for. You are at a day and a quarter a month. It takes a lot of months to accumulate over 500 days, which I had at one time. That is what they are for, not because somebody hit you with a car.

Mr Callahan: Okay, but as I understand it, you can opt not to exhaust those.

Mr Tornblom: No. As far as I know, you have no option.

Mr Callahan: We were told by the ministry that is not the case. When you first said it, I thought that was the case and I agreed with you that was unfair, because your sick leave is there for something that happens down the line. You may have to use it, and if it were eaten up in this way, I would object to that too.

Mr Tornblom: You have to apply for it. After three days, you have to get a medical certificate. It is obvious that a person is going to claim for the full wages. It should have nothing to do with your compensation.

Mr Callahan: But you do not have to use your sick benefits. That is clear in what we have been told. You can set those aside, collect the maximum that you are entitled to, assuming it represents 80 per cent of your salary, tax-free as well, and if you get sick, then you have these things you have earned and you deserve, to use down the line. Okay?

I just want to go back to one other thing. The former government—which was not ours; it was a Conservative government—obviously saw there was some need to compensate people, whether they were at fault or not at fault, with some ready cash. The amount that I recollect was there were no-fault guaranteed benefits of a maximum of \$140 a week for 40 weeks. After 40 weeks, if you had not gotten your claim settled or you had not gotten to court and had the issues of liability and damages determined, you were cut off. You had

nothing. I think that if Mr Kormos did any motor vehicle litigation work, or anybody did, they saw clients who were absolutely strapped. They would come, and any lawyers worth their salt would carry their cases forward, even though they did not have the money to pay for them.

Here what you have is something that is trying to get money into the hands of people immediately and to continue it. Sure, you swap it for the pain and suffering, but I am sure we have all seen cases, or any lawyer who would admit it, where you could have the best case in the world and you could lose it, and the person gets absolutely nothing. Witness the young boy in my community. He lost his case in the Supreme Court of Canada, and he has absolutely nothing as a result of it.

If you had had a plan there where it was no-fault, then the young man would be looked after. He would not have to live on the largesse of society. I just say to you that is a better arrangement, I think.

The Chair: I am going to have to interrupt here. Thank you very much for your presentation.

I appreciate it. For the committee's benefit, checkout time is one o'clock. Room 318 will be available if we want to put any luggage in there. I will be there probably between one and a quarter after one. Some of us are scheduled on CP or Canadian at 7:40 this evening. The committee is adjourned until 1:30 this afternoon.

The committee recessed at 1210.

AFTERNOON SITTING

The committee resumed at 1331 in Scandia Room II, Valhalla Inn, Thunder Bay, Ontario.

The Chair: I am going to recognize a quorum and welcome to the standing committee on general government the Ontario Secondary School Teachers of Thunder Bay, Ontario. Mr Inksetter is the president, and I believe there is another gentleman with you. The clerk has distributed copies of your brief. The next half-hour of the committee time is yours and after your presentation, depending on how much time we have left, we will get into some questions, comments and discussion.

For the purpose of Hansard, could you identify yourself and then proceed from there. Thank you.

ONTARIO SECONDARY SCHOOL
TEACHERS OF THUNDER BAY,
ONTARIO

Mr Inksetter: I am Paul Inksetter. I am a teacher of science and physics at Hillcrest High School and this year I am the president of the Ontario Secondary School Teachers' Federation, Thunder Bay division. With me is Bob Hartley, a teacher of biology and science at Sir Winston Churchill Collegiate and Vocational Institute in Thunder Bay.

We appreciate your providing us with this opportunity to speak. Our brief is the forest green one, which we have deposited with the clerk. I believe you have copies. We hope you will read it and give serious consideration to our recommendations. I must confess that we were disturbed to hear news reports on CBC news last night and in last night's chronicle *The Journal* to the effect that the government did not intend to pay a great deal of attention to the results of these hearings. We could only assume that such reports were incorrect, exaggerated or somehow misinterpreted because those were publicized locally. We sincerely hope that they were incorrect.

Let me take you through our brief briefly, without reading it to you in its entirety. In the introduction on page 1 at the outset, we indicate that we are in support of the government's initiatives in introducing no-fault insurance. We feel that accident victims should be able to receive compensation for losses without resorting to lengthy and costly litigation. If the no-fault scheme can eliminate the shotgun approach and the suing everybody in sight for imaginary or

exaggerated damages, then it will have served the public good.

We agree that an accident should not be a lottery ticket and that the present sue-for-profit syndrome must be broken. However, we fear that the proposed legislation is seriously flawed and we wish to address what we see as its two major shortcomings: First, the manner in which the no-fault principle is defined; and second, the manner in which no-fault benefits will be determined under the legislation.

Mr Hartley: When an accident occurs, usually one or a combination of three conditions prevail: One driver broke the law and could be charged under the Highway Traffic Act; both drivers were in error, or neither driver is really at fault, the driving conditions being the cause of the accident. Each driver is by law required to be insured and believes that this insurance provides him with a degree of protection. The problem of changing the fault condition to no-fault negates some of the reasons for having insurance in the first place.

Mr Inksetter: As teachers, we are dismayed that this government feels it can tell people, and our primary concern is the adolescent young people we work with daily, that they will not or cannot be held liable for the consequences of their actions. Although the bill does not directly address the premium rates we shall all pay for our car insurance, I suspect and rather hope that the insurance companies will still use a fault-based system and that high-risk or high-accident experienced drivers will be required to bear the cost of their actions, as they do now.

In our profession, as in all industry and government, there is an increasing demand for accountability at all levels. We must all be prepared to be responsible for our actions and to be held liable for the consequences of our actions. No government legislation should attempt to tamper with that fundamental principle. We address that on page 1, and near the top of page 2 is our first recommendation. We recommend that the no-fault principle be redefined in a manner that will guarantee a victim compensation without attempting to deny personal responsibility and liability.

Mr Hartley: As explained before, a driver purchases protection. This insurance is supposed to supply some degree of protection. By placing the onus on an individual's income protection

plan rather than on the insurance company, why have automobile insurance, other than collision, in the first place?

An example can be made where a person has been involved in a collision with a driver who has run a stop signal. The innocent driver is injured for a period of time and cannot work. Just as his benefits from his own sick leave plan run out, this places pressure on the individual to return to work. As a result, the individual is ill for a couple of days a week or a month and finds that his own sick leave benefits have suddenly run out.

The illness may or may not be as a result of the accident, but now the individual no longer has short-term protection for the few days a month or year that are missed from the workplace. Meanwhile, the insurance companies are free from obligation. The insured driver is the loser.

Mr Inksetter: Under this legislation, there are strict rules on what collateral benefits shall be included in or deducted from no-fault benefits and what ceiling is placed on total benefits received, either weekly or for a lifetime. Under this proposed legislation, the cost of automobile insurance is largely transferred from the drivers and their insurance companies and the premiums they pay to the taxpayers of Ontario through OHIP costs, to the employers of Ontario through the payroll tax that they use to contribute to OHIP and through the organized workers of Ontario who, through their collective agreements, sick leave and disability insurance plans, will be subsidizing the cost of insurance.

The government may have introduced this legislation in response to a perceived growing anger among the voters over dramatic increases in automobile insurance premiums. But transferring the cost of accidents on to workers and the taxpayers generally is a grossly unfair and inappropriate means of hiding the true social and economic costs of these benefits.

Towards the bottom of page 2 of our brief, we point out several ways that seizing the sick leave and disability insurance plans of workers to subsidize automobile insurance is unfair and unjustifiable. But not only does the proposed legislation allow this action, it also limits the benefits received to unrealistically low levels. Whether through the courts, as is presently the case with our fault-based system, or through the mechanism set up through no-fault legislation, any injured person must be given the right to recover the full value of all losses suffered as a consequence of an accident.

We have an ageing population. As teachers, as workers, as citizens, we now see more older

members of the workforce and of our society. These people will need the protection of the benefits that they have earned through their years of employment. You cannot allow these earned benefits to be depleted by the catastrophe of an accident.

Towards the bottom of page 3, we have two further recommendations with respect to benefits. We recommend that contractual benefits not be defined as collateral benefits under this act and we recommend that individuals be given the right to recover the full value of all actual losses incurred as a result of an automobile accident, including all income and the value of sick leave credits. We further recommend in our brief that the government recognize the reality of psychological afflictions, not physical afflictions only.

Time is something that money cannot buy. We have such a limited time to enjoy life on this earth and a disabling accident deprives us of the use and enjoyment of that time. Do not inflict the additional loss of financial deprivation on to accident victims. The population of Ontario has worked long and hard over generations to accrue social and protective benefits through their workplace agreements and their generally legislated social programs. It is tragic and unjust that any government should, with the stroke of a pen, debase the value of these earned benefits.

Members of the committee, we urge you to read our brief and to give serious attention to our concerns and recommendations. We are confident that you will, by your actions, deny those press reports that I alluded to earlier. We shall be pleased to answer any questions you may have.

The Chair: I have Mr Pouliot and Mr Nixon for up to 10 minutes.

1340

Mr Pouliot: I do indeed share in your concern that what is being said will not readily or in any way be acquiesced to by virtue of recent accounts of some declarations that have been made. In fairness to members of the committee, I would like to believe differently, that every word will be analysed and scrutinized and perhaps better legislation than what is proposed at the present time will emanate from your presentation, with respect, among others.

I am seeking a point of clarification, but let me prelude, if I may, by saying that you must feel that you have been selected, that you have been victimized lately. It is my understanding that you are now paying one per cent more of your salary into the superannuation fund—

Mr Inksetter: That is correct.

Mr Pouliot:—where you have a surplus on the one fund and there is no transfer possible to the other bank account. I know I, for one, found this to be both appalling and shocking. Today is Tuesday. I am always appalled and shocked on Tuesday.

The Chair: Today is Wednesday.

Mr Pouliot: I know the consequences of having one per cent less in my salary.

But in terms of your presentation, if I may refer you to page 3 in the first paragraph, this is where I seek clarification. I am not privy to a collective agreement, but it strikes me when I read, and I pay particular attention to your draft, you have an accumulated sick pay plan at the present time.

Mr Inksetter: Yes.

Mr Pouliot: Is it 15, 20 days? Can you share that with me? Is it public knowledge?

Mr Inksetter: Under legislation, we are allowed 20 days per year for sick leave, and under our collective agreement we may accumulate up to 200 days.

Mr Pouliot: Okay. So by intent and spirit, and please be patient—I ask some tolerance and understanding, but also caution; let's both of us be careful here—if I am blessed, I am a teacher and I am not sick this school year from September to June, I have 20 days. What happens to the next school year if I keep teaching? I add another 20 days at the beginning?

Mr Inksetter: That is correct.

Mr Pouliot: So the intent and the spirit would be that if I have ill fortune, if I wish, I will not be financially adversely affected and I can collect my pay. So if I miss two days because of the flu, I get my two days' pay.

Mr Inksetter: That is correct.

Mr Pouliot: When does it become a retirement gratuity?

Mr Inksetter: If, at the time of retirement, you still have unused sick days—you have not been ill during the latter years of your career, so the days that you have accumulated over your years of service have not been depleted through illness—you are given a retirement gratuity, a cash payment, based on the amount of accumulated sick leave that is in your account at the time of retirement.

Mr Pouliot: So a cynic might say to me: "Gilles, you were privileged to have that plan, but now, since you have been blessed with good fortune, you have become blessed. It becomes a retirement gratuity." I get paid—a cynic, again,

not me—a cynic would say I get paid for having been healthy.

Mr Inksetter: We have our cynics too, so we do not mind that.

Mr Pouliot: I am completely ignorant of those things.

Mr Inksetter: I do not want to divert the time of the committee into an exhaustive discussion of the merits of retirement gratuities and sick leave plans. It is just that under this proposed legislation, a teacher within five years of retirement who is involved in a serious accident may be required to deplete some of those sick leave credits, and thereby lose the service gratuity and perhaps receive a lowered pension for life.

Mr Pouliot: How interesting, but do you not, under the same collective agreement, have long-term disability?

Mr Inksetter: Yes, we do.

Mr Pouliot: So hypothetically again, I could have 20 years covered. Let's go back to the first year, and I am the victim of an automobile accident. Are you suggesting that under the proposed legislation, I would be asked to exhaust my 20 days' accumulated sick leave?

Mr Inksetter: The legislation stipulates that any no-fault benefits received shall be reduced by any income continuance plan available to the injured person through workplace agreements.

Mr Pouliot: Let's go back to intent and spirit. There is no connection whatsoever. Where is the insurance company's role in all this? You bought protection when you bought an insurance premium.

Mr Hartley: But only if there is fault. If there is no fault, as defined here, fair ball. But if there is fault, someone else has run a stop sign and nailed me, I would have the right for compensation from his insurance company for his fault. Under this benefit, my own personal benefits that I have accrued working long and hard will be the first to go.

Mr Pouliot: But that is an optional package that you have here, is it not, to use your sick days?

Mr Inksetter: I am not absolutely clear on that. The way the legislation is worded—

Mr Pouliot: It is ambiguous.

Mr Inksetter:—I do not have the option. In response to a question, a government information document indicated that there would be some options. In either case, the cost of my missed work is not borne by the automobile

insurance. The cost of automobile insurance will be subsidized by long-term disability, by the taxpayers, by OHIP, by sick leave plans. So it is a matter of who bears the cost.

Mr Pouliot: Okay. Correct me if I am wrong in the following scenario. We will do this quickly. Give or take \$1,000 or \$2,000, the average salary of a high school teacher in the city of Thunder Bay—and I am looking at years of service, A-4, if you wish, or A-2, whatever, and years of service—if I say \$50,000, am I in the ballpark?

Mr Inksetter: That is close.

Mr Pouliot: I am in the ballpark. Under the proposed legislation, drivers in Ontario will pay eight per cent more in terms of premiums. Their premiums will go up by eight per cent. Drivers in Ontario, by virtue of paying taxes, will pay \$143 million more of the pot, the cookie jar, general taxation that is going back to the insurance companies. Your sick days—and there is no relevance, no connection here—will be affected and for all this, you will give your right to sue, your right to recourse, in more than 80 per cent of the cases.

So is it your understanding, because it is mine so far—

Mr Inksetter: That is our understanding, based on this.

Mr Pouliot: —that you are paying more for less protection?

Mr Inksetter: Yes.

Mr Pouliot: That is the crux of the matter here. That is the focus. That is the subject matter being addressed, that you will be paying more and you will get less protection.

Mr Hartley: Also, the insurance companies rates are at a base now. We have heard nothing about them falling back because they are at a base of X amount at the present time.

Mr Pouliot: Thank you.

Mr Inksetter: A real concern is that the cost is being transferred from the insurance premiums and the insurance industry to the workers and the tax base generally.

Mr Callahan: Mr Chairman?

The Chair: I have Mr Kormos first for three minutes.

Mr Kormos: Mr Callahan is welcome.

Mr Callahan: Mr Chairman, on a point of order: I gathered Mr Pouliot to leave the impression with these gentlemen that if they had sick leave benefits, they would have to use those up before they would get any compensation. We

know from this morning that is clearly not the case.

The Chair: I am going to let you correct that during the time that we can get further clarification. Mr Kormos, three minutes.

Mr Callahan: I think the witnesses should understand the true facts.

Mr Kormos: Gosh, the last thing we need from Liberal members is lectures on true facts. Holy cow. They are the authors of some of the most bizarre and outlandish apologies for the insurance industry.

One of the things that has been forgotten often is that the problem in Ontario was that insurance rates had become unaffordable and insurance had become increasingly unavailable to more and more drivers, including good drivers. More and more good drivers were being denied coverage and being forced into the Facility Association.

As well, the insurance industry was lying about its losses, and John Kruger from the Ontario Automobile Insurance Board illustrated that. When the automobile insurance industry said it lost \$142 million in 1987, Kruger and board determined that in fact the industry had made \$55 million. So when the insurance companies say “lost,” what it really means is profit.

I also wonder and have to be concerned about an industry that would insist that it continuously loses money but then fights so hard to retain control of the industry. The government has backed off a little bit. In the old days, they used to say that the prospect of public insurance simply was not workable. Then they started talking about the huge startup costs, because Osborne talked about that, and now they are not even talking about that. They are talking about the sad dislocation of automobile insurance industry personnel.

The strange thing is that Liberals run a public insurance system in Quebec. Conservatives run one in Manitoba. Conservatives run a public insurance system in Saskatchewan and, of all people, the Social Credit, the man of 12 distinct societies, Vander Zalm, run one in British Columbia. The Social Credit run a public, driver-owned, nonprofit automobile insurance system.

We persisted with the minister that in view of the real difficulties that were out there, he should direct his Ontario Automobile Insurance Board to look at—if the government was concerned about startup costs, if the government was concerned about dislocation of insurance industry workers, why would the government not

instruct its board to look at public, nonprofit, driver-owned insurance so that it could determine what the startup costs were, so it could determine the extent of dislocation?

1350

Would it have offended you that the government examiner use its automobile insurance board to examine public auto insurance and any expenses and savings that would be inherent? Would it have offended you if the government had done that?

Mr Inksetter: I would certainly say we would not be offended by the government investigating any options. In response to your comments leading up the question, we are not actuaries, so we are not competent to comment on the ins and outs of the profit or the loss and so on. Our prime concern, as I have mentioned, is the transfer of the costs and, second, that our members not be deprived of the benefits that the sick leave was there for. If it is used to protect me from the loss of the automobile accident, what is left when I return to work to protect me from my heart attack or pneumonia or other illness.

The Chair: Mr Callahan for 10 minutes. Mr Nixon.

Mr J. B. Nixon: Thank you, Mr Chairman. I will leave it to Mr Callahan. I hope some time—

Mr Callahan: You go ahead.

Mr J. B. Nixon: There is a clear misunderstanding as to the utilization of sick days. It is our understanding from what we have heard at the committee, at least some of us, that the legislation says that the utilization of a sick day is at the option of the injured person. So they can choose to accept no-fault benefits or they can choose to utilize sick days, but it is their choice. The forced requirement that sick days be used to subsidize the insurance company is just not there.

Mr Inksetter: It was my understanding that we do have that option. However, the no-fault benefits are limited to \$450 a week, so depending on your family circumstances and your financial needs and the budget you are operating on, because of your accustomed income, there are clichés to describe that kind of choice. Either I use my sick leave or else I accept a no-fault benefit which is wholly inadequate to meet the needs of my family.

Mr J. B. Nixon: Most people will be aware or are being made aware by their broker that the no-fault benefit entitles them to \$450 maximum after tax. Say my salary is \$50,000, I need some additional coverage and that additional coverage will be there. My understanding is, that the

proposed average rate change in the Thunder Bay area, is zero per cent. The only estimates we have heard as to the value of any additional coverage or wage loss would be probably \$10.

Mr Inksetter: If the zero per cent increase is true, I will be quite happy, along with other drivers. It sounds to me, though, as if I am going to be in the position under this plan of having the basic no-fault plan but still being required to buy additional insurance, if I am not satisfied with the level of benefits that no-fault applies.

I will still be obliged to buy public liability insurance because under the act, if I am held to be at fault for an accident in which there is death or permanent disabling injury, then I will still be liable for those benefits. So I will still have to buy my public liability coverage and I will have to seek out additional—actually, because of my collective agreement, I may not have to buy that additional income coverage, but most workers will.

If I do not buy additional coverage but rather rely on the combination of my sick leave and my disability plan, the rates we pay for our disability insurance are experience rated, so if any participant in our plan goes on long-term disability as a result of an automobile accident, all the participants in that plan will experience a rate increase in the disability insurance because of the experience rating.

Mr J. B. Nixon: Do you know, Joe, if your disability insurance has a bulk subrogation agreement with OHIP?

Mr Inksetter: I do not know the answer to that question.

Mr J. B. Nixon: I put it to you that there are a lot of insurance programs out there that have no subrogation agreement with OHIP. Just keep that in mind when we talk about no subrogation agreement for auto insurance.

Another thing that you suggest to us is that you hope that under this legislation at-fault drivers can be held liable for their actions through a fault-based system for premium setting. I want to assure you that type of premium setting will continue to exist. This legislation does nothing to prohibit it. Bad drivers will pay high rates and low drivers will pay low rates. The no-fault deals with compensation rather than premium setting.

Mr Inksetter: I certainly hope that is true, as we have said in our brief.

Mr J. B. Nixon: Can I just check that that is true with ministry staff?

Mr Endicott: Say that again.

Mr J. B. Nixon: I am suggesting to these gentlemen that there will be a fault-based system for premium setting, that the no-fault only applies to the compensation side.

Mr Kormos: That is right.

Mr Endicott: That is correct. Each company will—right now, they make the rates on a fault determination and they will continue to do so.

Mr Inksetter: That is my understanding, but it is not addressed directly in the legislation.

Mr J. B. Nixon: My final question has to deal with your concern on page 4. You recommend that afflictions certified by a qualified medical practitioner be recognized for compensation by the legislation, whether the affliction be physical or psychological. That is in my understanding absolutely the case on the no-fault benefits side, that certification of a disability, whether it is psychological or physical, by a medical practitioner entitles the person to the no-fault benefits.

Mr Inksetter: On that information from you, I will certainly reread the draft copy I have. Now that may be been revised.

Mr J. B. Nixon: It has been revised and perhaps—

Mr Endicott: —the no-fault. You may not have the up-to-date accident benefit regulations. If you do not, we have another copy.

Mr Inksetter: My reading of the initial draft was that psychological distress was not recognized for compensation. Has that been changed?

Mr J. B. Nixon: It is in.

Mr Endicott: In the no-fault? Yes, that is in.

Mr Pouliot: On a point of order, Mr Chairman: My good friend Mr Nixon—

Mr J. B. Nixon: Are you asking me a question or making a statement?

Mr Pouliot: I am asking you simply to give a guarantee—

[Failure of sound system]

Mr Callahan: That is not a point of order, Mr Chairman.

The Chair: Your point of order?

Mr Pouliot: The point is that I would take this with a grain of salt. I know the point is well intended, but you cannot take it to the bank.

The Chair: The point being—

Mr Pouliot: The point being that, among other things, there is no compensation for psychological distress or loss, absolutely not. He cannot guarantee anything.

Mr J. B. Nixon: Listen, I am not making any guarantees, Mr Pouliot. I am asking ministry

staff what exists in the regulations today. That is not a guarantee. That is what is in the legislation and in the regulations. It is not my view; it is not my position; it is there; it is a fact. If you do not like it, tough.

The Chair: Order. Ms Oddie Munro, Mr Callahan, for a balance of three minutes.

Ms Oddie Munro: My question really follows on Mr Nixon's. It is my understanding, having read the draft regulations—which are still draft, by the way, and they will be subject to amendments based on the input we get—that the case for psychological consideration, both in the no-fault side and in instances, will also allow people the right to sue, based on psychological manifestations. So I think we should really make sure that you get a copy of those up-to-date regulations.

Mr Inksetter: Thank you. I would appreciate that.

The Chair: Okay. Mr Callahan, for two minutes.

Mr Callahan: I would refer my good colleague Mr Pouliot on his point of order to part II of the regulations, subsections 6(1) through (6). I think if you read it, you will clearly understand that there are provisions and that Mr Nixon was not dreaming. So I suggest that before you rise to attack a colleague, perhaps you should know what you are talking about.

Interjections: Oh, oh.

Mr Callahan: Well, Peter has infected me, I guess. I do not know.

In addition to that, the assistant superintendent of insurance in New York state came before this committee, I am advised. They have about twice the number of cars we have in Ontario, and he said that to double your \$450 to \$900 would cost—and I say this to the gentleman in the back who said, “Let’s get in the real world”—he indicated that you could do it for about \$10. That is in New York state, with twice the number of cars. Recognizing that the costs would increase with the diminishing number of cars, you are probably looking somewhere in the neighbourhood of \$20, maybe \$30 to do that, and perhaps a bit more if you want to increase it even more. So that option is available to you. I just thought that you might be interested in knowing that.

Mr Inksetter: Thank you.

1400

Mr Callahan: I would like to say to you, if you stay where you are now—even the former Conservative government recognized that some

degree of no-fault was necessary in order to tide people over that three- or six-year period, whatever it took to get their claims settled as they went through the courts with all the backlogs and so on. That only lasted for—I think 40 weeks was the maximum—and I can tell you from personal experience that did not help aggrieved people, if they did not have substantial income of their own to look after themselves. This is certainly an improvement. You would have to agree with that. I hope I can get you at least to go that extent, that this is an improvement.

Mr Inksetter: Over the previous no-fault benefits?

Mr Callahan: Yes.

Mr Inksetter: Oh, yes.

Mr Callahan: These are an improvement over that. In addition to that, under the existing scheme, if a person cannot prove liability, they get zilch, they get nothing other than the 40 weeks at \$140. Any lawsuit is a crapshoot. I mean, you could have the best case in the world and lose it, depending on who you have got: you know, the quality and the experience of the lawyer representing you. So, in essence, if you maintain a tort system, you really provide a shot at compensation for those people who are wealthy enough to hire high-priced counsel, and also for the people who are able to get the matter on in a district where the court is not backlogged as badly. So you have an inequality throughout the province.

Mr Inksetter: We would agree with that. That is why we point out in the introduction to our brief, in the third paragraph on page 1: "Let me state at the outset that we approve of the concept of a no-fault principle. An accident victim should be able to receive compensation for losses without having to resort to lengthy and costly litigation."

The Chair: Gentlemen, thank you very much for your presentation.

Mr Mutch, the clerk of the committee has circulated a copy of your brief. The next 15 minutes of committee time is yours. If you could leave some time at the end for some comments, questions and discussions, I am sure we would appreciate it. Please proceed.

LESLIE MUTCH

Mr Mutch: My name is Leslie Mutch. I believe strongly that Bill 68 will create an injustice. I am a small businessman in northwestern Ontario, in Geraldton, Ontario. I know the Caramat Road very well, Mr Pouliot. For some

years now, I have been self-employed. I own and operate a small contracting company, heavy equipment, roadbuilding related, and I have a number of trucks and pieces of equipment on the road.

On 29 January 1987, I was driving west on Highway 11 in a pickup truck. As I neared a logging road, there were two pulp trucks coming on to the highway. The first one made a right-hand turn and proceeded up the highway. The second one pulled straight across in front of me. I had the length of a pulp trailer to stop—40 feet at 40 miles an hour—you do not do it in the wintertime. As a result, the vehicle I was driving went under the pulp trailer. It was fully demolished and I had to be freed with the Jaws of Life. It took them about an hour. I was then transferred to Geraldton hospital, where I was stabilized, and flown to Thunder Bay, where I required surgery, various therapy and what not.

In the accident, both of the bones in my right forearm were broken in eight separate places and I had an operation that resulted in the metal plates. My right ankle was torn apart; it was on the brake. Everything in the front of the truck went back and was thrown on top on me. I required surgery and screws to hold that together. The net result was I was completely immobilized for six months in plaster.

After six months, I was able to resume some responsibilities in my company with clerical work and management, supervision. It had always been my practice to do a lot of my own maintenance. It keeps me competitive; in a small company, we have to tender on contracts. It gives me a bit of an edge. As a result of this accident, I incurred in excess of \$10,000 out-of-pocket expense above and beyond because of the inability to do my own maintenance. I also had to hire one extra staff to do the physical things that I could not do. I could supervise and manage, but I needed an extra pair of hands and a healthy back.

It has been three years since my accident. I know you will pick up on that. I have recovered substantially. I am back to work almost totally unaffected. After some long hours and hard work, I still have aches and pains and I still limp now and then. Strength in my arm is not 100 per cent. I have some bad scarring. I have this inability to rotate my right forearm and my wrist. You cannot manipulate tools properly, minor things like shaving, taking change, feeding yourself properly. But I do not think these things would be considered permanent serious impairment. I am up the creek on that. A lot of the scarring and what not is covered by clothing, so

again it is not permanent serious disfigurement, I would not imagine. But I have a scar that runs from here to here. I can show you if you want me to start disrobing.

As I understand it, in consequence of Bill 68, I would not be able to sue the other driver if that plan were in effect at the time of my accident. I endured a great deal of pain and still do. I understand that there would be no compensation for that. I would feel cheated. I mean, I am driving down the road, minding my own business, this guy ran out in front of me. I would have this settlement forced on me without due process, arbitrarily decided. I do not care if it is the same afternoon. I want due process. I do not care how long I wait. I want justice done; I want to feel that I am not being cheated. In addition to the expenses incurred in my case, 450 bucks a week would not begin to cover it.

My wife Geraldine was a passenger in this vehicle and she too received injuries. The prospect that she too would be denied the opportunity to sue is frightening, because although her injuries were soft tissue in nature, bruising and cuts and scars and what not, she incurred additional business expenses. She operates her own small business. She was off work for about six weeks. She had to hire an individual for six weeks. She had to rent a vehicle. Even though she was hurting badly, because I was totally immobilized, she had to keep on going and try to tend to my needs. So it would have been like a double whammy. We would have both been out of pocket. That frightens me.

She had periods of dizziness for months, nightmares for months. She is still a little nervous. Her arm was damaged to the extent that she cannot close her fist tightly. As I say, she too should be entitled to some restitution, some compensation, something that is decided through due process, through arguments with lawyers or whatever, but there should be some way to come up with fair equity in that regard, other than a limited thing.

I hope that in any event the Legislature gives serious consideration to the harm that Bill 68 will do to a good portion of the people of Ontario. I think it represents a direction that I do not care to see society going in. Thank you.

The Chair: I have Mr Callahan and Mr Pouliot for three minutes each.

Mr Callahan: I will pass.

Mr Pouliot: Mr Mutch, I thank you for having travelled this way on this hard trip notwithstanding the kind of weather we have experienced. All

you want out of the insurance coverage, if you wish, under protection, you want fairness?

Mr Mutch: Fairness. I believe that strongly.

Mr Pouliot: Would you refer to yourself as a small businessman?

Mr Mutch: Yes, sir.

1410

Mr Pouliot: Someone who gets up in the morning?

Mr Mutch: Yesterday I rested for this job. I get up at six o'clock in the morning. I worked until 11:30 last night. I took an easy day.

Mr Pouliot: It is not your fault you get involved in a car accident. In this case it is the other driver's fault, obviously. You want to break even in this game, do you not?

Mr Mutch: At least break even, yes.

Mr Pouliot: You see, members sitting around this table here, if they were involved in a similar accident, would get their paycheque at the end of every month, and you are paying for that. I am one of them. I do not hide about this. You will receive no compensation for business losses, for pain and suffering. What they are telling you, under this legislation, is that you will maximize to the tune—you may—of \$450 a week maximum, and at any time during that three years the insurance company, at its discretion, may send you a letter saying that you are cut off because you are deemed to be able to go back to work. Are you aware of that?

Mr Mutch: Yes.

Mr Pouliot: And your premiums have gone up on the average, if you are an Ontario driver, to the tune of eight per cent minimum. What do you think of this legislation when you read this?

Mr Mutch: It flies in the face of anyone who is—fairness keeps coming to mind. It is not fair.

Mr Pouliot: I drive about 50,000 kilometres a year. I get well compensated. It is my job. I have the best job in the world. I assume when I buy coverage, when I go to a broker, when I go to my insurance agent, and I give him, let's say, \$1,000—it can be any amount of money, but let's say \$900 or \$1,000 a year—I am going to share a secret with you: I do not read the policy because I know that if I get run over or if I walk down the street in Manitouwadge—you live in Geraldton?

Mr Mutch: Yes, but I know Manitouwadge well, I have worked there.

Mr Pouliot: We go and check the mail at the community post office, Mr Mutch, and an accident happens, catastrophe strikes, calamity.

We get run over and we break our leg. I would assume, that since the driver hit me, then I would be at least compensated for the money that I make so that again, like I said this morning, be like the others.

I am in business too and I have to make ends meet. Most people have family responsibilities. What are you going to tell your son and daughter? I am not catastrophizing this, because the real world says that you have to pay your mortgage, you have to pay for home improvements, you have to pay the sheriff at the end of the month because the wolves will start gathering. So you have to keep them off the back door, in our case.

You are not getting this, and yet your premiums are going up. I am like you and I say, "What gives?" I am the least partisan. There are 130 like me, and I can say with all sincerity I try very much. The records will attest that I am not to be partisan, but when I see what is being done, all I need to do is come and pick up and fill out my expense account here—I have one—and get paid on top of what we make, get my \$100 a day tax-free—and we could talk about that at length—and go home and bury my head in the sand. But I said, "One second here." You know, I worked 20 years of graveyard shifts—

The Chair: Thirty seconds.

Mr Pouliot: Thirty seconds is enough—not to put up with this thing here, and that is not posturing. I agree with you. I want to know what I am buying, and every time I ask I fail to be satisfied.

I do not have a business degree. My father was a worker, I am not a lawyer but I can read, and when I read a document three times and I fail to understand, whether I do it in Spanish, English or French, its intent and the spirit, I say to those people here, with due respect to counsel—and half of this committee is made up of lawyers—I say, "Go back to the drawing board and give me value for money" and just as important, "Give me something that I can relate to when I read it." But you are not going to get it here, sir.

The Chair: Mr Nixon, three minutes.

Mr J. B. Nixon: I will try to be briefer than that. Thank you very much for appearing today.

Mr Pouliot put the situation to you that if you were receiving the \$450 lost income and it was arbitrarily cut off, what would you think, and you said it was unfair. I would agree with you, if that was the situation.

Let me try this out on you. What if the legislation was to say that if the insurance company had been paying no-fault benefits and it determined at some point that it did not think you

were any longer entitled to those benefits and let you know, yet it was required to continue paying those no-fault benefits but could ask for mediation or arbitration of the issue, that question of entitlement, and paid for it, would you think that was fair?

Mr Mutch: That line of thinking or reasoning is fair, but it is the \$450 that I would have trouble with in my case, because I was putting out about \$1,000 a month for the extra wages. Plus, I lost in excess of \$10,000 for maintenance on equipment that I had to end up bringing to shops to do. It is the \$450 that bothers me.

Mr J. B. Nixon: I hear you. I am talking about the specific issue of fairness of arbitrary cutoff which Mr Pouliot was asking you about, and I suggest to you that the legislation does require mediation and arbitration and does require the insurance companies to pay for that mediation and arbitration if they are disputing entitlement. I just wanted to let you know that.

Mr Mutch: In that regard, yes, putting it that way, I would be comfortable with that.

The Chair: Thank you very much for your presentation.

Ms Reid, a copy of your brief has been circulated by the clerk and you have 15 minutes. If you want to leave any time for questions, comments and discussion, that is entirely up to you. The next 15 minutes are yours.

SHERYL REID

Ms Reid: My name is Sheryl Reid. I live in Thunder Bay and I am 22 years old right now. On 11 October 1985, my life changed for good. I was driving my mother's car and I was stopped for a driver who was turning in front of me and I was hit from behind. Immediately my life changed and it will never be the same.

I was enrolled in a dental assistant program at Confederation College at the time of the accident and I had high hopes of getting into dental hygiene the next year. I tried to go to school after the accident. I had a neck brace on and I took pain killers and muscle relaxants daily. I went to physiotherapy and to my doctor. I lasted at school for about three weeks.

It is kind of hard to stay at school when you cannot pay attention to the teachers and you do not understand the writing on the board because you are so spaced out on painkillers. Sitting up, my back could not take it. So my teachers and doctors advised me to quit school. I did not want to; I tried as hard as I could to stay because I did not want my dream to end. I quit school and I

ended up staying at home for a year in my room. I lost a year of my life and I was only 18 years old.

My friends got kind of sick of sitting and listening to me complain and cry all the time because I was so depressed. So I lost my friends; they did not want to hear it. I went to physiotherapy every day for two years. No amount of money would compensate for the emotional and physical effects that this accident had on me. If someone wanted to give me \$1 million and told me to sit in a car, saying, "I will give you \$1 million if you let me hit you," I would say, "You can take it. I don't want it." I will never have that year back and I really think that this bill you are trying to pass is unfair to me and unfair to students in Ontario.

I got back into school the next year and I had to take drugs again while I was at school, painkillers and muscle relaxants. I had to work twice as hard as anyone else to maintain my marks—when you are taking narcotic medication. I had to suffer every day, but I went on because that was my dream; I wanted to do it.

Also, I was studying to be a piano teacher at the time of the accident. I could not play piano for the two years. I could not sit at a piano bench. My dreams of becoming a piano teacher have since gone. It is kind of hard to catch up on what you have missed for two and a half years not touching a piano key. I used to babysit. I used to go out and do things with my friends. All those things stopped.

I kept a diary after my accident of how I felt every day and what I did every day. Looking back on it in the past few days getting prepared for this, it did not even seem like I wrote it because I am not the same person who wrote these things in my book. I am very changed since the accident.

I have here on Thursday, 20 March 1986: "I keep hoping this will all end soon because if it keeps up much longer, I don't know how much more I can take. Thanks to the accident, I don't have a life any more. I'm fed up with being an invalid. I wish my life would just be back to normal. Once I'm better, I'll never take life for granted again." It is strange looking back on notes and seeing how depressed something can make you.

I also wrote: "I'm getting extremely depressed and crying for no reason. I guess everything happening is the reason. I just want a normal life." I even have written in my book that it came to the point that I would just maybe take all my pills and get rid of the pain. Trying to live with that pain is unbearable and maybe if some other

people were in accidents, they would understand how we feel.

I have been compensated under the present plan. I think it was fair. It was my decision to settle, but no amount of money will ever bring that year back to my life. Someone offering me \$180 a week, if I were a student at the time of the accident, is like slapping me in the face. "We are going to take a year of your life and here, we'll give you \$180 a week." It is just not fair.

Someone said this morning that this new proposed bill will put the money into the hands of the victims sooner. I think it is going to put the money into the hands of the insurance companies a lot sooner.

I am still petrified to drive. Every time I stop at a stop light or stop sign, I look in my mirror and wonder, "Is this person going to stop?" "Are they going to hit me?" I do not know if I could go through it again.

The most important thing that you should know about victims is the anger they feel when it is not their fault. You are obeying traffic laws and someone else hits you. If I had known who that person was, I do not know what I would have done, but at that point you just feel like almost killing them. You want to get revenge on them. At least some of the settlement I got helped to relieve some of the anger I felt, but under the present system, I would be so angry. If that was all the compensation I was going to get, I would find that person and I would run into him too. What is the worst that can happen? I mean, my insurance rates will go up—so what?—and I will get a traffic fine. But I would make sure that they felt exactly the way I do.

I still live with pain. I have to go to therapy every day, and this is four and a half years later. I still take pills sometimes and I might never be normal again. I might have arthritis in my neck by the time I am 30 and not be able to work. I just really want to voice my opinions, and I hope that the people who are supporting this bill are taking and listening to some of the things these victims have to say. That is all I have to say.

The Chair: I have Mr Pouliot and Mr Kormos, for up to three minutes.

1420

Mr Kormos: Your position is unenviable, but at the same time, you are among really a few people who understand what this legislation is all about. The government has spent a lot of taxpayers' money putting together split packages. They have been promoting this as Tide would a new brand of clothes detergent. The insurance industry has spent thousands and thousands of

dollars. Indeed, last week, two days out of four, there were full-page advertisements in each of the three major Toronto papers: not quite full-page in the *Star* and the *Globe*, but who knows how much: \$30,000, \$40,000, \$50,000, \$60,000 worth of drivers' money.

But I tell you, Ms Reid, the real tragedy is going to happen if the Liberals ram this legislation through, as they have every intention of doing, because those were the instructions from the insurance industry. The master talks and they obey. There is going to be the sad case of you or the miner or the factory worker who is victimized, as you are, like a bad, negligent or drunk driver who walks into the lawyer's office saying, "How do we start the process going where I can be compensated?" and the lawyer has to say to that person, "There is no compensation." The victim says: "But you don't understand. It was a drunk driver who hit me." The lawyer says, "That drunk driver may well get more out of this than you will as an innocent victim."

There are going to be thousands and thousands of those people from next year and the year after and the year after that, because the effective, slick, glossy marketing—and you have paid for every penny of that marketing—and the lies and deceit have misled people into thinking they are getting something called a motorist protection plan.

This government has not even begun to realistically address its commitment to accident prevention. It talks about OPP officers. Where? On Highway 401. It will not tell us how many have been transferred there, because it is doubtful it has transferred any and if there are any there, they have been transferred from northern Ontario. It has not hired new OPP officers. It has taken them off the northern highways and moved them down to Highway 401. It has not done a single thing about upgrading the standards for new drivers to ensure that before a person gets on the road and behind the wheel of a car, he or she is properly trained and capable of operating that vehicle safely.

That is when it starts to show real interest in victims and I say the sad thing is the people who are going to be in their lawyers' offices, saying: "I don't understand. I believed when the government said there would be more compensation for victims," and the lawyer is going to have to say: "No, it doesn't matter that you were the victim of a drunk or negligent driver and that you're in great pain and that you are suffering, that you suffer broken bones and torn flesh.

There is no compensation for you because the insurance industry is making profits that it never dared dream of before. In that respect, it is your bad fortune."

Mr Pouliot: You describe blow by blow, step by step, the transition or the evolution of the calamity and you have done it better than certain members of the committee, for you have lived it, unfortunately. You acquiesced, on at least two occasions, that, "Yes, I have. I was fortunate inasmuch as I have received some compensation" but "No money would suffice" for these moments you never quite catch back. From what has happened to you yesterday, the quality of time derived from the quantity, the loss of friends, the anxiety, the trauma, you have to have something in the belly to talk like that. You have to have a frame not to worry.

But you are right. When you make the transition from what is happening to you, a personal story, to what? It is just a matter of days. Yesterday, you were dignified; you were impoverished the next day. It is just the timing, because when this comes through, because it is ill thought, this is unfair. That is why you are here. If this comes through, you will be left holding the bag. You will not even have the last resource which is at least some physical or some material comfort. This takes it away.

Mr Callahan: I think there would be no one at this table who would not be sympathetic with what has happened to you or other people who are in that particular predicament. It is not a happy situation. In fact, you say you settled. I presume you did not want to go through the ignominy of a trial. That makes it even worse. You can always lose and may get nothing. What did you get right off? Did you get any money at all?

Ms Reid: I got my section B benefits from my own insurance company.

Mr Callahan: So you got \$140 for 40 weeks?

Ms Reid: I cannot remember what it was now. It was not enough, since I was a student. It was not enough for the pain.

Mr Callahan: Even under that plan, under the existing plan, you have the same problem. It is probably worse because, after 40 weeks, if there had not been any settlement effected or the matter had not gone to trial, you would be cut off entirely.

Ms Reid: I just settled my case a few months ago. It was going on four years when I settled.

Mr Callahan: Yes, that is precisely it.

Ms Reid: But that was my choice.

Mr Callahan: Okay, but part of the—

Mr Kormos: The insurance company would not pay.

Mr Callahan: Mr Kormos, I listen very carefully when you make your statements. Perhaps you would just keep quiet.

Mr Kormos: You should listen more carefully.

Mr Callahan: But you have to go through that ignominy. Really, I suppose what we are trying to do here, we are trying to make certain that people are looked after, both financially and also from a physical standpoint, in terms of giving them that retraining and giving them that assistance physically.

The two gentlemen over here—you have to understand the dynamics of this whole thing. Their purpose is to say that anything the government does is rotten. It does not make any sense.

Mr Kormos: You are in the pocket of the insurance companies.

Mr Callahan: Mr Kormos and his colleague would advocate public auto insurance.

Ms Reid: I think that would be better than what the government is offering us right now. Anything would be better than if you are taking away my rights.

Mr Callahan: You should look at the Manitoba experience.

Ms Reid: East Germany is going to be better off than we are. At least they do not take away your rights then.

Mr Callahan: I do not think you would find that under public auto insurance you would receive—

1430

Ms Reid: I would still have the right to sue to receive compensation for what another person wrongfully did to me and that is what I am looking for.

Mr Callahan: My understanding of public auto insurance is that—

Mr Pouliot: You're a lawyer. Take your 10 per cent.

Mr Kormos: Did you take the money or not?

Mr Callahan: In any event, I think you should understand the dynamics here. We have to sit under and be accused of being dishonest and in the pockets of the insurance companies. Mr Kormos has privilege in a committee. He would not dare

go outside this room and say that because he knows what would happen.

Mr Kormos: The Liberals took the money. I said that inside and out.

Mr Pouliot: On a point of order, Mr Chairman: I find it difficult—the critics are being maligned while motorists are refused—I would think members of the majority party should be more conscious about their conduct.

Mr J. B. Nixon: Oh, come on, Gilles.

The Chair: Mr Lennie, the next 15 minutes of the committee time are yours. If there is time after your presentation for comments, questions and discussion the committee will either entertain you or entertain the audience, one of the two; I am not sure which. Please proceed.

ROBERT J. LENNIE

Mr Lennie: I have been watching you on TV the last few weeks and have been greatly entertained.

The government of Ontario is proposing to introduce legislation to change the existing motor vehicle insurance laws. This law will in effect remove the right to sue in the case of an accident causing personal injury unless the victim has a serious and permanently disabling impairment. As an accident victim myself, I find this proposal totally unacceptable.

I was injured in an automobile accident on October 1984. The first diagnosis, on arrival at the hospital, was a crush fracture to the right tibia plateau. After initial treatment I was transferred to Thunder Bay for surgery to repair the break. This injury, while not life threatening, was very serious.

The diagnosis of the orthopaedic surgeon was that the break would, after a period of 10 to 15 years, deteriorate to the point of requiring additional operations to repair the damage. This would possibly necessitate a complete knee replacement. After consulting four additional specialists, who all concurred with the original diagnosis, it was determined that I would not be able to return to my previous job as an underground miner.

After consulting the doctor, my solicitor and my employer, it was determined that I would enter a retraining program to be able again to lead a productive life. After one year of rehabilitation to regain mobility, I entered George Brown College in Toronto to take a one-year course in stationary engineering. With this accomplished, I returned to my employer with a stationary engineer's certificate in November 1986 after a two-year absence from the workforce.

If this legislation had been in effect at the time of my injury, both my family and I would have suffered financially then and in the future. Under this proposed legislation I would have received \$450 a week, less the amount payable to me from my company's disability program for the first year and \$450 a week for the second week, for a total of approximately \$31,000 total reimbursement. This amount would be less than half of my actual wages for the three years lost between 1984 and 1986. How could a family of six survive on such a wage deprivation and have no chance of recovering that loss?

In my case, the injury I sustained will progressively get worse and it is the opinion of the doctors that I will not be able to continue working past the age of 50 or 55 years due to the progressive deterioration of the injury. Under the proposed legislation, an accident victim would not be able to sue to recover future lost wages. If this law had been in effect during the period of my mishap, I would not have been able to recover the means to keep financially solvent when I am no longer employable due to the nature of my impairment.

It is my opinion that this proposal should be withdrawn or significantly amended to reflect the need for fairness with the right to sue. This law would be detrimental to the welfare of future accident victims.

There are a few things I would like to say. I went through the whole legal process and I received a settlement. It was a fair settlement. Most of the money I recovered was for future loss of income because all the doctors said I probably would not be able to work past about 50, between 50 and 55. That was the time frame they gave me, so most of the money I got was to keep me financially stable during those years. If this law comes into effect, I would be broke. There is no way to recover this amount of money. You are living on welfare after 55.

Mr Pouliot: Is it okay, Mr Lennie, if I call you Bob? Manitowadge is not a very big place. We live in the same place and are very familiar. We went through this time and time again over many cups of coffee; not the proposed legislation because it is relatively recent. After all, there was no design or planning, and it was just quite obvious. You have shared this with us and we are most appreciative. A family of six; again, it is not the proverbial; it is the real world. You have to feed them.

I have known you for over 20 years and you have been an upright citizen and you have never bitched. We picked up our lunch pail every day,

we went to work and we paid our taxes and said, "Somewhere along the line we are going to get a fair shake." In your case catastrophe struck; you know, the twist of fate. I do not wish that on anyone. It happens. Statistics can be related there; very possible, very real. The second-best thing is it means the comfort of my family. I'm okay, Jack. More important, what about my family? It is going to take some time. Under this legislation they are not saying the same thing. They have jacked up the price of the ticket. If you were Bob here, you would want your money back.

This is three pages. How much more descriptive—do you have to be a mathematical genius emanating from Harvard? Do you have to have a PhD? Do you have to ride around in the backseat of a limo provided for a minister? We have ten presenters. Ironically—well, not so ironically—the only one who spoke in favour of the proposed legislation is the guy selling the ticket, an insurance broker. I say, with all due respect, everyone is entitled to make a living and a good one at that. It is not an error. As a social democrat, I do not want to keep what is mine and take what you have. I want everybody to be rich. It is not gloom and doom.

Again, I defy anyone—just read the two and a half pages in plain English and tell me that Bob Lennie from Manitowadge is wrong. Tell me that he would be better to be under what you propose, the sham—because it is that—than what he got as a settlement. He does not believe that. What you propose is far worse and would not compensate him to even half of what he was making as a miner. If you have one ounce of—I know you have decency—common sense—if you do not believe what people like me and other people are saying, at least read the polls. That is a motivator. Fear in politics is very much a motivator. Again, there is still time. This is not the end.

I believe somewhere—maybe I am naïve; so be it—this thing can be a much better document. There are a lot of things. You know, I pay taxes to send those young people to school all my life. Surely I deserve better than what has been drafted. It is not your fault. There has to be some political will. So I charge those people.

Mr Lennie, we will go back home and we will have a cup of coffee. Thank God I am going there, without Torontonians or the greater Toronto area. I am telling you that there is little relationship to the real world of contributors, of people who work, who get their hands dirty; none whatsoever in some cases.

That is all I have to say, but again I am appalled and shocked. If you read this, surely you will do what is right and either withdraw the bill or amend the legislation to make it fair.

Mr J. B. Nixon: Thank you very much for appearing, Mr Lennie. I appreciate it. The question I had was, when was your case settled?

Mr Lennie: This case was settled a year ago.

Mr J. B. Nixon: In 1989.

Mr Lennie: In 1988.

Mr J. B. Nixon: In 1988, four years after the accident.

Mr Lennie: Four and a half years after.

Mr J. B. Nixon: What did you do for income during those four years?

Mr Lennie: I was off work for two years. The first year I got the \$140 a week plus my disability payments from the company, which brought it to just over \$450, but the insurance company also gave me a lump sum advance, which more than covered me through the first year and a half.

1440

Mr J. B. Nixon: The insurance company gave you that.

Mr Lennie: Yes, they did. The second year, I went to school under the manpower retraining program.

Mr J. B. Nixon: The manpower retraining program.

Mr Lennie: Yes, but the insurance was also involved in that.

Mr J. B. Nixon: Okay, the insurance was involved. Did they assist your family with support?

Mr Lennie: Yes, they did. Manpower paid the tuition, but they helped with my living accommodations while living in Toronto for a year.

Mr J. B. Nixon: You are aware that under the present proposal there would be even expanded benefits for retraining, occupational training, relocation expenses and so on and so forth, even more than is there now, given what you have received? Second question: is this a permanent disability?

Mr Lennie: Yes, it is.

Mr J. B. Nixon: I take it is, and given the evidence you are not going to be able to work past 50 to 55. Deterioration; at the very least arthritis; it looks as if you will have joint surgery to replace the knee and so on. It sounds like a permanent condition.

Mr Lennie: Yes.

Mr J. B. Nixon: It is definitely serious. You would agree with me that it is serious and continuing.

Mr Lennie: Yes, I do.

Mr J. B. Nixon: My suggestion to you is that there is a good chance that you would exceed the threshold and continue to have the right to sue.

Mr Lennie: What is the threshold, though? I am back in the workforce now. How can you go back 10 or 15 years later to try to recover your money?

Mr J. B. Nixon: That is the problem you face in any lawsuit, because you have to commence the lawsuit within two years of the accident. That rule does not change. If you exceeded the threshold, under the old system and the new system you would have to start your litigation within two years. As you know, it is not necessarily resolved very quickly, but in the interim you continue to get those no-fault benefits for rehabilitation and occupational therapy.

Mr Lennie: That is what I received anyway. I had all that.

Mr Somerleigh: You could not start the actual; you would get knocked out.

Mr Lennie: This is my lawyer. He is kind of my technical adviser.

The Chair: Just for purposes of Hansard, perhaps you would have a seat and maybe identify yourself. It would be helpful.

Mr Somerleigh: He should know his own legislation.

Mr Pouliot: Mr Lennie was provoked.

Mr Somerleigh: My name is Robert Somerleigh. I am Mr Lennie's lawyer. I am acting for him on this particular settlement. This gentleman should know his own legislation.

The Chair: Do you have a question, Mr Nixon, to either Mr Lennie's lawyer or to Mr Lennie?

Mr J. B. Nixon: I suggest to you that there is a real question. In my mind, I believe there is a good chance that Mr Lennie would exceed the threshold. Now, neither of us has had the opportunity of litigating that in a court. I take it you are prepared to give a firm opinion that he would not exceed the threshold. I am not so sure. I suggest to you that lawyers will disagree on this issue. That is all.

Mr Somerleigh: It is difficult to describe it as continuing when it stops and starts.

Mr J. B. Nixon: Well, he said it was continuing.

Mr Somerleigh: It is not going to take him out of the workforce until he is about 53 years old.

Mr J. B. Nixon: He said it was a continuing injury because he is going to have to have a joint operation within 10 to 15 years. It continues to deteriorate; the damage continues.

Mr Somerleigh: It is serious infirmity—

Mr J. B. Nixon: He said it was continuing, not me.

Mr Somerleigh: —at a point in the future. Were you practising your cross-examination technique on counsel?

Mr J. B. Nixon: No, no. You did quite a good job yourself.

Mr Somerleigh: The injury is cumulative and builds up to a point in time when he is about 53. Two years subsequent to the accident, defence counsel would have brought a motion to knock that thing out as falling below the threshold at that point in time, and it would have. You can speculate if you like, but when four orthopods file reports that say the thing is progressive, deteriorative and continuing up to the point that it takes him out of the workforce, all those cumulative factors do not come to bear at the time defence counsel brings a motion.

Mr J. B. Nixon: But the court would have that medical evidence, four medical opinions from four specialists.

Mr Somerleigh: At some point in the future—

Mr J. B. Nixon: Hold on. Let me just reply. May I reply to you, sir?

Interjections.

Mr Somerleigh: This legislation does not say at what point in time you experience—

Mr J. B. Nixon: May I reply to you?

Mr Somerleigh: Can I finish?

Mr J. B. Nixon: I thought you had; sorry.

Mr Somerleigh: Your legislation does not say at what point in time it has to be serious and permanent. It does not say at what point.

Mr J. B. Nixon: This gentleman came and told me that he had a serious, permanent and continuing injury. You have told me that you can get four medical opinions to that effect. I suggest you would go before a court of law and test the threshold. He says it is serious, permanent and continuing. He has four medical opinions that say it is. The judge is going to say, "It's beyond the threshold."

You may have an interest in coming her to tell me he would not. I am trying to advance your client's interest and suggest to you—

Mr Somerleigh: Get paid.

Mr J. B. Nixon: I am not interested in your payment. I am talking about an ideological interest. I think he would exceed the threshold.

Mr Somerleigh: The man is back at work at the time. The experts say this is going to happen in the future.

Mr J. B. Nixon: But the experts are also saying it is serious, permanent and continuing. Do you see my point?

The Chair: I would like to say that the time has expired, Mr Lennie and your lawyer. Thank you very much.

Mrs Murdoch, the clerk is circulating your brief to the committee. The next 15 minutes is yours, however you want to use it. If we have time for questions, comments and discussion, we will get involved with that, I am sure. Please proceed.

CONNIE MURDOCH

Mrs Murdoch: I have been following with great apprehension the progress of this bill, through the media, due to the personal circumstances of myself and my family. In 1985 my husband of 15 years was crushed while working on a bridge abutment just outside the city of Thunder Bay. He was impaled on a piece of angle-iron that was sticking out of the bridge by a cement truck that backed into him.

His injuries were major. He was in intensive care for 10 days in critical condition. He was off work for two and a half years. He had upwards of 20 to 25 surgeries—I lost count—several life-threatening infections and several hospitalizations. During the time he was off work, he was reimbursed by workers' compensation.

However, the real impact on our family was more in the loss of care and companionship that we suffered during the four to five years since his accident. We have four teenaged daughters who were faced with the day-to-day stress of never knowing whether their father was going to be in the hospital when they woke up in the morning, because on several occasions he was taken to emergency during the night because of infection in his leg. When he initially came home from the hospital, they took the responsibility of nursing care, which meant feeding and bathing him, helping to change dressings and helping to carry him upstairs, which in the first weeks after he came home was a monumental task because he weighed about 200 pounds and was unable to move himself at all. We had to carry him up and down stairs for his bathroom needs.

The emotional upheaval on children of this age, as you can imagine, was extremely traumatic. Without getting into too many personal details, the children are all suffering. My 15-year-old daughter left home because of the stress. We were all in family therapy for more than a year. Just recently, through the lawsuit, I was reluctant to have the children testify. After they did, they all said to me that it was a relief to them to be able to say their piece and talk about how the accident had affected them. So it was a very positive thing for them to be involved in.

As I said in my brief, I feel very strongly, based on what our family has gone through, that it is very wrong to deny a family some sort of recourse through the courts for compensation for this kind of loss. I urge you to reconsider or amend the legislation for those reasons.

Ms Oddie Munro: I have not taken a look at all of what we are calling no-fault benefits that you received and those that would be available now under the new scheme, but I think that probably the coverage proposed is significantly better than the total amount you are talking about. I would have assumed too that you have had the right to sue. Certainly a lot of the things that we have tried to put in and are certainly looking at, the kind of amendments and clarifications on the regulations, was to introduce, for the first time, long-term benefits, support for children and a number of things like that which at this current time are not available under no-fault insurance. But as I say, I do not know what the diagnosis is. It certainly looks to me as if it was serious enough to also have got through under this bill and allow the right to sue.

1450

Mrs Murdoch: He is able to work now.

Ms Oddie Munro: I think your comments are very helpful to us when you talk about the pressure and the stress and make us even more committed, at least to add to our commitment to make sure that the rehabilitation side of the no-fault certainly goes through to all concerned. Am I wrong? I do not know if you have any comments to answer me because I could have misinterpreted.

Mrs Murdoch: My husband is able to work now and my understanding was that under the no-fault legislation he would not meet the threshold.

Ms Oddie Munro: I think he would have.

Mr J. B. Nixon: What sort of injury did your husband sustain? It was a severe injury to the leg.

Mrs Murdoch: He has a broken pelvis and a smashed right leg. All the arteries and nerves to the leg were lacerated. His collar bone was fractured. Just about everything on the right side was damaged.

Mr J. B. Nixon: It was a terrible accident. Is he back at work at the same job he was doing?

Mr Murdoch: Yes, he is able to work.

Mr J. B. Nixon: Is it a complete and perfect recovery?

Mrs Murdoch: No. He has full function, but he has tremendous scarring and he has great risk of phlebitis and infection.

Mr J. B. Nixon: Once a lot of that starts coming out, the great scarring and the risk of phlebitis and we are not sure what other medical symptoms, it starts to sound like a case that exceeds the threshold, which would mean your husband would continue to have the right to sue, and you and the family with him. I realize lawyers are going to debate this just as you saw previous to this and it is very hard for either of us to say without knowing all the facts, without reading the legislation and without some legal decisions being made in the court.

It is something for all of us to keep in mind if the legislation goes through, to think about how it can be made better. I appreciate your coming, but I want to suggest to you that at the very least it is not a black and white case that you and your family and your husband would have been denied the right to sue.

Mr Kormos: You have to believe me, Mrs Murdoch, that today is a little bit of history in the course of this legislation because we have heard the latest lie and that is that everything meets the threshold. That is the argument that is obviously being used to meet these concerns: "Don't worry about it. The cheque is in the mail." Gosh, we have lawyers jumping up out of the audience, aghast at what Mr Nixon is trying to tell the public.

It is too bad that those types of promises could be made so readily and with so little commitment. After all, we heard the comments from Premier Peterson back in 1987, that he had a very specific plan to reduce auto insurance premiums, a promise that was never kept, a promise that was shown to be a lie. There is more and more of that.

The other argument these people use is that it is all or nothing, that if you take their no-fault—we have had no-faults in this province for a long time and indeed they have become outdated; \$140 for wage replacement. That is what it has been for over 10 years now. It is grossly inadequate

because it was not indexed in the first place. I think that all of us—we certainly do in the New Democratic Party—believe that people should be compensated for significant wage loss, for medical expenses, for rehabilitation expenses, for care expenses, regardless of fault. In your husband's instance it appears that the driver of the cement truck was shown to be at fault.

Mrs Murdoch: Partially.

Mr Kormos: That is what gave rise to the successful claim for compensation.

The government says that it is all or nothing, that either we treat everybody—the government is saying that everybody, regardless of fault, has to be treated equally. What they mean by that is that nobody gets compensated for pain and suffering or loss of enjoyment of life.

Do you have difficulty living with a system that says everybody, regardless of fault, should get wage replacement—everybody needs money to live—medical expenses, rehabilitation expenses and long-term care and those types of expenses, but not that people who are not at fault, people who are innocent victims, should be able to collect more, that they should be able to be compensated for their pain and suffering and the loss of enjoyment of life, as you and your family were? Does it offend you that a person who is innocent be treated a little bit better than the drunk driver?

Mrs Murdoch: No.

Mr Kormos: Notwithstanding that the drunk driver gets banged up and injured in the accident that he may well have caused. It does not offend you that his victim be compensated for pain and suffering, the victim of the drunk driver?

Mrs Murdoch: Of course.

Mr Kormos: Notwithstanding that the drunk driver will not be compensated for pain and suffering.

Mrs Murdoch: I am not sure I understand your question.

Mr Kormos: The drunk driver will not be compensated for pain and suffering. He will not collect any money for pain and suffering. Is that acceptable to you, if he caused the accident?

Mrs Murdoch: I think that is a judgement call. I am not sure.

Mr Kormos: But can you live with a system that says the drunk driver will get medical expenses but will not get pain and suffering if he caused the accident, or have I confused the issue?

Mrs Murdoch: Yes, I think you have.

Mr Kormos: Fair enough. I have done that to myself often enough.

Mr Pouliot: He is not driving.

Mr Kormos: The real issue is one of affordability, and that is that auto insurance has become increasingly unaffordable. The premiums that people were paying, even good drivers, were rising sky high. You mentioned the Premier's promise back in 1987, the one that was never kept. The fact is that this new insurance scheme is not going to reduce your premiums.

Indeed, Mr Justice Osborne, in the Osborne report, says so and John Kruger, head of a multimillion dollar project, the Ontario Automobile Insurance Board, says that this special scheme is not going to result in any ongoing savings, that any savings or increased profits to the insurance company will be at the expense of injured people. In other words, the money will come out of the pockets of injured people. Notwithstanding that, once that is done, insurance rates will continue to climb as before.

This system the Liberals are trying to ram through ensures profits for the insurance industry on the broken backs and limbs of innocent victims. It denies those people compensation and says, "You are not going to get compensated for your injuries," and that money to the tune of estimates ranging from \$630 million to \$700 or \$800 million in the first year alone, that much money is being taken from taxpayers and victims and is being put into the bank accounts of the private automobile insurance industry in this province.

It is no wonder then that every time an insurance executive has come before this committee, he thinks this legislation is the greatest thing since buttered popcorn. They just cannot wait for it to get passed because they are counting the dollar signs; they are looking at the Mercedes-Benzes and the condos at Harbourfront. It is going to be a real pay day for them and the sad thing is that you and your children and your husband and victims next year and the year after are going to be paying those increased profits.

The Chair: Thank you very much for your presentation.

Mrs Ager, am I pronouncing that correctly or even close? The clerk has distributed copies of your presentation and you have 15 minutes. If there is any time after your presentation, we will get into some discussion, comments and questions if you would like. Please proceed.

MARGARET AGER

Mrs Ager: Let me say that I am a mother, a worker and also an accident victim. Let me say further that my husband is a worker, a father and also an accident victim. I went through our present legal system and received what I feel was reasonably fair compensation for injuries that I suffered and for loss of wages. I used the services of a lawyer in Thunder Bay to present my case and to assist me in obtaining my settlement.

I can tell you that I have suffered from the date of my accident to the present time. I was unable to work for several years as a result of my accident and therefore suffered a loss of wages at that time, and I was then only able to go back to part-time employment and therefore continued to suffer a loss of wages.

My husband was involved in a motor vehicle accident approximately two years ago and he was unable to work for almost two years. My husband works for the railroad and earns considerably more than the \$450 per week that you contemplate allowing to wage earners for their loss of wages. If my husband's accident were to happen after the passing of your new no-fault legislation, then where would my family find the money to pay the following: (a) our mortgage; (B) day-to-day living expenses; (C) car payments; (D) insurance payments on house and cars?

Why should the insurance company of the driver who is at fault be allowed to get away with not having to even make up the difference between the \$450 per week in benefits and the amount of money my husband would earn. My husband earns in excess of \$50,000 per year on the railroad and we would therefore have a shortfall of probably \$24,000 in one year. How would a working family like ours ever make up this kind of shortfall in a lifetime? What you are really doing is taking and adding a second and third mortgage around the neck of every working accident victim if he has any debts at all. How can you do something like this to the average working family?

I believe my husband has suffered greatly as a result of his accident. I have watched him and lived with him following this accident and I know the troubles and difficulties he has had. I can tell you all about the problems and the pain and suffering I went through. There were many days and sleepless nights in which I endured an incredible amount of pain. You are now saying that no one should be paid for such pain and suffering. I do not understand how you can propose something like this at all. It is beyond all common decency to even suggest that our pain

and suffering should not be compensated at a reasonable level.

Our lawyer has told us that there is a limit as to how much one can get for pain and suffering in Canada. While I do not necessarily agree with everything I see and hear about United States law, I have been told that there is no limit in the United States on pain and suffering. If we have a limit on pain and suffering in Canada, then why do you find it necessary to now wipe out any moneys at all for pain and suffering?

I believe you must take another look at this new law and speak to the people who have actually suffered as victims and not just listen to the insurance companies who, let's face it, are here to make a profit and a buck in any way they can. I can tell you that maybe there are a lot of people who feel lawyers make too much money. Well, if it was not for the lawyers standing between the insurance companies and the victims, who do you think would profit, the insurance companies or the victims? Who do you think would come out on the short end of that stick?

Please rethink this new law.

Mr Kormos: We have had a whole lot of insurance people come here and of course they support the bill. They want it pushed through real fast and they will say anything to get the public to believe that this is a real slick bit of legislation, and I tell you it is a real slick bit of legislation because it is going to make them profits, as you point out.

There is a lot of criticism of lawyers. Even this afternoon some of the Liberals here have tried to question some victims who have been here about how long it took, yet really the bottom line is that as often as not the reason it takes a long time is because the insurance companies do not like paying out.

Mrs Ager: Right.

Mr Kormos: They will try to starve a victim into submission. They will try to grind that victim with prolonged court proceedings into dropping out and there are thousands and tens and hundreds of thousands of people, probably, in this province who have experienced that from insurance companies.

What is really crazy is that the insurance companies, when they are coming here now, are coming cap in hand saying, "We promise not to do that any more," as if the leopard has changed its spots. I am going: "Holy cow. I do not believe this." Of course I do not believe it because it is unbelievable and it is incredible.

You might have heard me talk to the young lady who was here before. The government wants this to pass as quickly as possible. We had to fight to get them to come to Thunder Bay, for instance, to listen to people. We had to fight to get them to have committee hearings at all. They did not want to have any. They just wanted to ram it through. The sad thing, as I mentioned to the young lady earlier, is that if this bill gets passed, in any form—the government is going to play with it and tinker with it and do like the feds did with the goods and services tax. They dropped it from nine to seven per cent to make you think you are getting a real bargain.

The government is liable to Mike Wilson it or GST the threshold, but the sad thing is that the people who do not understand how bad this bill is, as you do understand, who are injured or victims, end up having to be told by their lawyers, "No, there is not going to be any compensation for you." Then the people are going to say, "My God, how did that happen?" By then, it will have been too late. People have to fight back now and let this government know that this is simply not acceptable.

To pick your pockets, to pick the taxpayers' pockets, the victims' pockets and to do it on behalf of a greedy, gouging insurance industry—they have done nothing to change the description of them. It was valid 10 years ago, five years ago and indeed is valid now. The government is really in the back pockets. It is arguing every angle on behalf of the insurance industry. That is really shameful.

Mr Pouliot: Mrs Ager, most of the people who have made a presentation voicing their disfavour, their displeasure with the proposed legislation, almost each and every one of them, have mentioned vividly the lack of coverage. They felt that the maximum, if you wish, that the parameters, be it 80 per cent for low income, 80 per cent across the board was too low.

When I leave today, I will take several highlights, if you wish, for lack of better terminology, of what has been said. But one that I will very much take with me as one focus, and there have been more than that—several—is that this plan does not generate enough money. Am I right in assuming that this is a very important component of your presentation?

Mrs Ager: Yes, it is.

Mr Pouliot: I have not heard too much, incidentally, up to now. As I said, it is my first and only day. It is not my committee. People do not seem to pay a great deal of attention to the

premiums. I know they are concerned, but they are concerned about what the—

Mrs Ager: I do not mind paying the high premiums.

Mr Pouliot: But you are concerned about what the plan generates.

Mrs Ager: Right.

Mr Pouliot: I am quoting, if I may, from what you told us here. You say "(A) our mortgage; (B) day-to-day living expenses; (C) car payments; (D) insurance payments." You label them A, B, C, D; you could have gone the whole alphabet here.

Mrs Ager: Right.

Mr Pouliot: It is not your fault again, and I share that. There is no bloody way, José. I am going to get run over by a car; I am not at fault and I cannot even make, in many cases, half the salary. What you are saying here is that this is long-term.

Mrs Ager: Yes.

Mr Pouliot: A guaranteed trip to the poverty house.

Mrs Ager: Right.

Mr McClelland: Thank you very much for being here. I know that you are coming here with a heartfelt conviction and something that you are sharing on a very personal level, and that cannot be an easy thing for people to do. I want to say very clearly, at the risk of being painted as somebody who lacks common decency, that I am not so sure. I will make a statement underlying one of the reasons I am supportive generally of the legislation.

I heard it said by many, many people that not all the money in the world could ever compensate for the pain and suffering that people have gone through. I have had experiences related to family members where they have been severely hurt. I think I can echo that and say that no money in the world would make it up. Then we hear people say—it was said by a witness this afternoon—"At least it gives me some sense of satisfaction that I got some money." I will accept that.

Having said that I accept that, I want to also suggest to you that there is another view, if you will. It is a societal view that says that at times we have to make value judgements and decisions. A number of the provisions in our society that we have seen over the years as our society has evolved do not necessarily recognize that financial compensation is appropriate for some of the injuries we sustain.

I would simply say to you that it is a value judgement, and ultimately—I may agree to disagree—there may come a time when I say that if I were to devise a plan that would provide for people, I may be prepared to forgo some of the monetary return as a representation of pain and suffering to say that we want to be able to provide for people economically, provide for them in a holistic manner, get them back to work and make them productive members of society. I have said that earlier and I will probably say it again throughout the course of these hearings.

This bill is designed among other things to provide some income replacement indemnity. It is not the only feature and I am not sure it is the most important. I think there are many more important things: timeliness and the delivery of the service. I believe that will be of benefit to people like you and families.

Let's talk very briefly about the \$50,000 per year income that your household has. The reality is that under the present bill you would receive the equivalent of about \$30,000 given the tax factor that—

Mrs Ager: That is after my husband uses up his sick leave. Now what happens if he does not have any sick leave, or myself?

Mr McClelland: Let me go through that. You have a basic coverage of \$30,000. I think this is something that has to be understood. A lot of people have said that they feel that is the limit. There are cases when people have the option of using sick leave. They have the option of using other plans to top up to what their income requirements are. I heard you say—this is a reality and I do not hide behind this one little bit—there are some cost factors that some of us will want. Some of us will want to pay a little extra money above our zero or eight per cent. There will be those of us, myself included, who will choose to buy additional coverage for the family.

I think it is important to understand that as you discuss your needs with your broker, you have the option to look at what benefits are available to you under your husband's work, the income providers if there are more than two in the family, what provisions you already have and what your needs are. It very well may be that the benefits you have at work are such that you can use those to bring the no-fault benefit up to the equivalent of what you would receive if there had been no disruption in your life.

It may be the case, admittedly, that those benefits would not be able to be used to do that because of the way they were structured, in which case you may choose to buy some

additional coverage. But I think it is fair to say—my colleague Mr Pouliot has left at the present time and I regret that, because I think—

Mr Kormos: He has not left.

Mr McClelland: Sorry; I did not see him at the table, Mr Kormos. Thank you for pointing that out to me.

I want him to hear this because I think it is really important that we understand when we look at this and as we work through this legislation, that we are trying to look at situations that will cover the vast majority of people and put them in a good position. Seventy per cent of the people of this province will be in a position where their income is replaced and where they are taken care of. I think it is important that you understand that. I want to say to you that I understand what you are saying and I just may happen to disagree, that I think there are things that are more important than financial suffering—compensation if we can put people in a good economic position, make them well again, put them back into the workplace and try to pull their lives together. I think that is as important.

The Chair: Thank you very much for your presentation.

Dr Zaitzeff—am I pronouncing that even closely?—the clerk is distributing copies of your presentation. You have 15 minutes of the committee's time. If there is any time after you have made your presentation we will get into some comments, questions and discussion. Please proceed.

DR V. P. ZAITZEFF

Dr Zaitzeff: I have been a family physician here in Thunder Bay for four decades. I have literally seen hundreds, if not thousands of motor vehicle accident victims. Some of these individuals have been grievously injured, while others have had very small injuries and others have had moderate injuries. These injuries can last anywhere from weeks to months to years.

There are very few injuries that I have seen that would be considered to be catastrophic in nature and that could be considered to be of a very permanent duration. The leaps and bounds in which modern medical science has grown in the last 40 years have literally been incredible. We are now able to rehabilitate many accident victims who five or 10 years ago would have been considered to be permanently disabled. These individuals in many circumstances can now be considered to be fully rehabilitated and without lasting and permanent serious injuries.

These individuals have nevertheless suffered in many cases for months and years. The term of that rehabilitation has usually been very tough and very difficult for them and for their families. These individuals, in most cases, have mortgage payments, car payments and living expenses. I can tell you that without the efforts of many lawyers in the legal system helping these people negotiate settlements with insurance companies, they would in many cases be left penniless and helpless.

Your new legislation apparently cuts off the right to sue for past wage loss and potential future wage loss. What happens to the shortfall between your proposed \$450 per week and the actual monthly expenditures that an average Ontario family continues to have each and every month? Why should an innocent accident victim not be able to sue for this shortfall?

The increased rehabilitation benefits are long overdue, and I can tell you that this is something that I have not understood for many years as to why it has taken this long to get these rehabilitation benefits.

In closing, I cannot agree that the vast majority of accident victims should lose their legal right to pursue proper compensation through the present court system. I am firmly of the view that your legislation is being pushed too quickly and without enough thought to its far-reaching consequences.

Mr Pouliot: Doctor, thank you for taking time off your very busy schedule to present the committee with the broadly summarized view of your more than four decades of attending, in this case, the less fortunate victims who are victims of accidents. Please bear with me if I ask you the following question: out of 100 people, from your professional experience, how many—approximately of course—would you diagnose as having catastrophic and permanent injury?

Dr Zaitzeff: Very few.

Mr Pouliot: Would it be five per cent, 10 per cent, 15 per cent?

Dr Zaitzeff: I think that would depend on your definition of "catastrophic." As an example, an injured knee, crushed ligament, torn; orthopaedic procedures, repairs. End result: possible 10 degrees flexion contraction; in other words, he cannot extend to a straight line but it is 10 or 15 degrees, which is not very much for a guy like me or a man in his 60s. I do not do any sports and so forth, but it will be a major catastrophe to a hockey player or any young individual who is active in sports, in that light.

Mr Pouliot: There again, candidly proposed in your second paragraph, and I am quoting, "the shortfall between your proposed"—you are talking in terms of the government's proposed legislation—" \$450 per week and the actual monthly expenditures that an average Ontario family continues to have each and every month." The people who are your clients, or more appropriately your patients, from your experience again, \$450 does not represent a sufficient amount vis-à-vis the expenditures family people have to face, does it?

Dr Zaitzeff: Absolutely. Since this legislation was brought to the public's attention, I have actually talked many times to my patients about this and the majority, as applied locally—an average paper mill worker, say age 35, looking after a family of between four or five, has a mortgage on the house, maybe has car payments, has drug bills and has to feed his family—do not think it is enough.

Mr Pouliot: You have described pretty well what Statistics Canada would agree or would identify as your average family. I know at first hand of mill or mine workers about 35 years of age, slightly more than two children—I guess you either feed two or three or more; you do not feed them in percentages—and sometimes the spouse is working but more often than not—let's say the average family income in Ontario is about \$52,000.

That is what the stats say, Mr Nixon. You seem to take, if not pride, a perverse and continuous pleasure in disagreeing. I do not know if it is a style with you. I do not know if you get up on the wrong side most every morning.

1520

What I am saying is what I am relating to what I read, no more no less than that. You have to be a psychologist. You know people in your profession. After toiling for many, many years—this is difficult for me to ask, but please, it is fair. I think it is fair. As your gut feeling, why would a government—I say this regardless; I am not scoring political points—propose this legislation?

If somebody was to ask you over a cup of coffee in the morning and say—you have dealt with people all your life. What is behind this? I have searched long and hard and was unable to find a direct answer. I do not want to say they are in bed with the insurance companies and in this kind of relationship you have to look past the pillow. That is too facile; that is too easy. I do not think it is necessarily fair, either. I like to listen and ask people, "Why do you think the

government would come up with this proposed legislation?"

Dr Zaitzeff: I presume they try to save money on insurance.

Mr Pouliot: On the premiums.

Dr Zaitzeff: On the premiums, plus of course the government has its political obligations. I believe the government, in its campaign, was promising reduced insurance rates.

Mr J. B. Nixon: Mr Pouliot, the only time I would ever disagree with an honourable member like yourself is when we have a disagreement as to the facts. I would suggest to you that the average wage in Ontario is much less than \$52,000.

Mr Pouliot: The record will attest I said "family income."

Mr J. B. Nixon: We are really dealing with wage replacement for individuals. That is what the \$450 talks about. It does not replace family income; it replaces individual lost income. If you have two-income workers making \$26,000, two times \$26,000 being \$52,000, then this would provide more than full—not more; it would provide full wage replacement. Having gone through that and explained the misunderstanding we probably both had, Mr Pouliot, I would like to turn, doctor, and ask you a question about your practice and the type of patients you deal with.

Mr Pouliot's question was whether you saw many that were catastrophically injured and I think you said somewhere between five and 10 per cent.

Dr Zaitzeff: I said within definition—you see again, of course, the stress is on physical.

Mr J. B. Nixon: Yes.

Dr Zaitzeff: It has to be physical.

Mr J. B. Nixon: In your view, what is catastrophic? What do you mean by catastrophic? How do you interpret that?

Dr Zaitzeff: A permanent serious disability.

Mr J. B. Nixon: That includes disfigurement?

Dr Zaitzeff: Yes.

Mr J. B. Nixon: And what percentage would you say?

Dr Zaitzeff: Of accident victims?

Mr J. B. Nixon: Yes.

Dr Zaitzeff: I will agree it is probably, if you analyse it, five to 10 per cent.

Mr J. B. Nixon: Five to 10 per cent. In those people who have, in your words, catastrophic accidents, are they more than likely to end up litigating, being involved in a lawsuit?

Dr Zaitzeff: People are funny. Sometimes they litigate without any good reason in my opinion, as regards this, and others do not when they should, but probably they will, yes.

Mr J. B. Nixon: One of the things that was established when Mr Justice Osborne was looking at accident compensation, and Mr Kruger, was that generally speaking in Ontario the victims of minor accidents are overcompensated in the insurance system and the victims of catastrophic accidents are undercompensated in the insurance system. Do you have any views on that comment?

Dr Zaitzeff: I do not think I know enough to say.

Mr J. B. Nixon: A question to you: We have heard from many people who have experienced injuries, either personally or within their family, and have waited many years—three or four years—before there is a settlement of their case or there is a court decision on their case. Do you find many patients in your practice have that experience?

Dr Zaitzeff: Yes, very many, but there is a reason for that. In our business, before a patient is definitely determined to have a permanent disability it may take several years. You are talking about mostly as far as automobile accidents are concerned.

Mr J. B. Nixon: Yes.

Dr Zaitzeff: Soft tissues, joints, bones and that type of thing: before anything is definite, three to five years is not unusual.

Mr J. B. Nixon: I understand that, from a medical point of view. The question then becomes, how do they survive in that interim period until there has been a medical determination of the severity and permanence of their disability? How do they survive?

Dr Zaitzeff: I cannot answer that question. There is some—the insurance companies, not very much, I understand. What is it, \$145 per week?

Mr J. B. Nixon: It is \$140 a week for a maximum of two years, I understand.

Dr Zaitzeff: I do not know the details.

Mr J. B. Nixon: I suggest to you that the no-fault benefits being proposed, which would be available to people during that interim period, are far greater under this proposal.

Dr Zaitzeff: I suppose in the whole system this is the unjust part of it, you know, that—

Mr J. B. Nixon: Yes. Thank you very much, doctor.

The Chair: Thank you for your presentation and taking the time to come today.

Mr Santorelli, your presentation has been circulated to the committee. The next 15 minutes are yours. If you could leave some time at the end for some comments, questions and discussions, we would appreciate that. Please proceed.

1530

RALPH SANTORELLI

Mr Santorelli: My name is Ralph Santorelli and I was born on 3 January 1960 and I reside here in Thunder Bay, Ontario.

I was involved in three separate motor vehicle accidents that occurred in November 1979, July 1981 and November 1981. The first accident resulted in a back injury which caused me considerable pain and some loss of income, as well as disruption of my usual everyday activities. Fortunately these injuries healed so that I was able to return to employment before the second accident occurred. The insurer of the driver who was at fault for the first accident settled my claim for pain and suffering and loss of income.

The second two accidents injured my lower back. Despite extensive treatment my lower back has never completely healed. I was active in running, swimming, tennis and played squash just about every second day. I have not been able to return to any of these activities since those second two accidents.

The insurers of the two drivers who caused my injuries eventually paid me a settlement amount with respect to the loss of income I suffered and compensation for the physical activities I can no longer perform. I was also paid an amount for prejudgement interest on that money.

When these accidents occurred I had a grade 12 education and was employed at a grain elevator as a labourer. An orthopaedic surgeon who treated me recommended that I have a fusion performed on my back, but I have elected not to do this treatment unless I have absolutely no other choice. There is a strong possibility I will require a fusion at some point in time in the future. In the meantime I have undergone physiotherapy for extensive periods of time to try to ease the pain in my back, and continue to do so.

I was eventually able to attend college to take an electronics technician course, which allowed me to start working again in 1985 at a reduced level of income. My loss of income from 1981 through to 1986 was in excess of \$73,000. I had disability insurance coverage which paid me a

portion of that loss of income. I was able to obtain a loan from the bank to assist me because of the certainty that I would receive an award of damages at some point in time as a result of my injuries.

I had planned to be married in 1982, and because of the disability insurance and the loan from the bank I was able to proceed with these plans while still taking my retraining at the college.

As a result of the settlement award, I have been able to invest in a computer business and to get on with my life. I am told that I will always have to endure a certain level of pain in my back and that this could get worse in the future. There are certain activities I can no longer do, and there may be periods of time that I will not be able to work in the future. As mentioned above, there is a very good chance I will require that fusion. If this occurs and is successful, my doctor indicates that I would be disabled for at least six months. Of course, there is always a chance the surgery would not be successful and my condition could become worse.

I understand that if the proposed insurance legislation is to be enacted, a victim in my circumstances would not likely be able to sue for damages. Since I was covered by a disability insurance policy at work, I would not have received any disability payments for loss of income under the proposed insurance program. I would receive nothing to compensate me for pain and suffering, future surgery or to compensate me for the fact that I can no longer be active in sporting or other activities. In other words, I would receive nothing even though I was an innocent victim.

I also understand that under the new legislation a person with injuries such as mine might have to wait until during or at the end of a trial before finding out whether he or she had the right to claim for damages. This could cost a lot of money in legal fees if a judge were to decide at the last moment that a person did not qualify for the right to sue.

As I see it, this proposal tries to save money for the insurance companies at the expense of taking away benefits from people who are injured. This unfairly punishes the victim.

Mr Pouliot: Mr Santorelli, thank you for your time, for your presentation. Again another example—some of my distinguished colleagues sitting opposite must be somewhat concerned, or if not disturbed by getting a little nervous. It is not open season on insurance companies—you did

not have to do what you have done, Mr Santorelli, and I personally wish to thank you.

You have been through it. This is not as if living in fear, and people unsolicited are saying—I look at my circumstances and your circumstances, Mr Santorelli. This is what has happened under a system, and from what I know of the proposed system this is what would not have happened. I have heard time and time again Mr Nixon try to—it is like pulling teeth. It seems that the record always go back to, “We will give you a few dollars now,” like loan-sharking, shylocking. I lived in New York City and I spent 23 years in downtown Montreal, 14 of them on the waterfront, so I am familiar with those terms. “Trust me till payday but payday never comes.”

It seems to be that for the sake of expediency or better still maybe the following analogy or parallel with some validity—income tax is coming around the corner. If we cannot fill in our income tax, we go to some firm and in fact some of them, now the legislation has been changed—thank heavens—they pay you almost the same day but then of course they get a luxurious, a very high fee. This is what that man is saying right there. That is what that—

Mr Santorelli: It is a short-term solution.

Mr Pouliot: What you are saying, from your own experience, is that you have been, if not fairly treated at least you had recourse there. You felt comfortable. It allowed you to start your own business. It allowed you to better your education, to give you the tools and money does that. It helps. It is an important component to defend yourself in society. That is what money did, right?

Mr Santorelli: What it allowed me to do was take all the activities that I used to enjoy, the squash, the swimming, the playing of tennis and divert those efforts into business. I was able to do something else because I was compensated for those damages, for the pain and suffering. That is what it allowed me to do. I feel you are taking away that right for those people. How are they going to be compensated? How is everybody else going to be compensated? What are they going to be able to do if you are taking our right away?

Mr J. B. Nixon: I will respond when Mr Pouliot is finished.

Mr Pouliot: What the government is saying, what those people are saying is that they will give you a few dollars more at the beginning. It will not take as long but you will sell your recourse. Nothing is free. The tradeoff here is that for as long as the sun shines and the river flows, the

money stays with the track. You did not buy a ticket. The insurance company will never have to pay you and then, if you lose five pounds, you will be deemed to be a jockey.

Damn near after a year or a year and a half, when the pain has numbed a bit, these people will say: “Let the lawyers play ping-pong back and forth. We are going to split it three ways.” Sure as hell you are not going to get your \$450. Even that is not cast in stone, and should you get it, now you will get it quicker but that is all you will ever get. Nothing for pain, for anxiety, for numbness, for nausea, for trauma; you do not get anything. That is all I have to say.

I want to thank you. This is a live story again, unsolicited, true life, real life, palpable. I am listening but I am not sure that some other people are.

Mr Kormos: The sad thing is that among the many rationales—the government sort of grabs here, grabs there, depending what the argument is at a particular point in time, but one of the rationales for this legislation is, “Well, if this legislation is not passed, your premiums are going to go up.” What is new? Your premium has been going up year after year. The insurance company has been picking your pocket for more and more every year.

Let’s face it. The real solution to bodily injury is to make the roads safer, not with dumb little advertising campaigns that simply put money in the pockets of the Bay Street advertising firms that put out posters saying, “Buckle up.” That is important, but it is real safety concerns about making highways safer, making vehicles safer, making sure that before a person is licensed to drive he or she has to be fully qualified and that he or she has to participate in a professional driving school, spend X number of hours behind the wheel under the guidance of that professional driving school.

That is how we are going to protect victims. That is how we are going to control insurance costs, by making sure that there are fewer accidents.

This government has done diddly-squat in that regard, lipservice, nothing more. The real issue is the fact that this government lets unsafe drivers on the highways, and it does. They could deal with that in a day by changing the regulations, at the stroke of a pen. They have had advice in that regard time after time and they do not respond. My God, how many fatalities, how many smashed bodies is the government responsible for because of its failure to act on real issues of

highway safety? That is perhaps the real question.

1540

Mr J. B. Nixon: Mr Santorelli, thank you for coming before the committee. I want to tell you that I have been accused of just about everything, murderous intent, whoring, lying, burglary, shylocking now, grand theft, less than grand theft, and I reject that just so people know where I stand.

Mr Pouliot: Take it in sequence.

Mr J. B. Nixon: I appreciate your coming before the committee. You say on page 2 that you understand that if the proposed insurance legislation is an enacted a victim in your circumstance would likely not be able to sue for damages. Who gave you that understanding?

Mr Santorelli: That understanding came from what I have been hearing, partially from my lawyer who helped me out with my case here. I do not know if I would have met that threshold you are speaking about. I am not sure that a judge would be able to make that decision. I really do not know. Would I have been able to sue for damages? Will other people be able to sue for damages if they do not meet your threshold, and what is the threshold?

Mr J. B. Nixon: The answer is that if people do not meet the threshold, no, they will not be entitled to sue for damages. The determination as to whether or not a person meets that threshold will be made by a judge after hearing medical evidence as to the nature of the injury. Without having all the medical—I am not a judge and it would be difficult for me to give you advice whether or not you would meet the threshold, but I understand that there is a continuing disability in your case. Is that right?

Mr Santorelli: That is correct.

Mr J. B. Nixon: Do you view it as serious?

Mr Santorelli: I view it as serious.

Mr J. B. Nixon: It is obviously physical in nature, with other aspects to it. Is that correct?

Mr Santorelli: Yes.

Mr J. B. Nixon: On that alone you have to start thinking that this is an injury that meets the threshold and would give you entitlement to sue.

Mr Santorelli: Why should I let you decide or a judge decide—

Mr J. B. Nixon: I am not going to decide.

Mr Santorelli: —based on whatever he may feel that day or whatever you feel today that I meet that threshold or I do not meet that

threshold. Why are you taking away our rights to sue for damages?

Mr J. B. Nixon: Let me put a responding question to you. Why do we right now give to a judge the right to determine whether or not I have proved another guy was at fault and therefore I am entitled to compensation or not entitled to compensation?

Mr Santorelli: Based on the evidence, but what I am asking you is how can he do that in a day or within two years? My injuries are going to stand over the rest of my life.

Mr J. B. Nixon: I agree.

Mr Santorelli: What you guys are doing is a short-term situation.

Mr J. B. Nixon: He does it the same way he does it now. When you go to trial now, he hears medical evidence and your lawyer, on your behalf, will say, "We have medical evidence suggesting that this is a permanent and serious injury and therefore we want damages on that basis and the judge makes that type of decision now."

Mr Santorelli: Or he throws it out of court, one of the two.

Mr J. B. Nixon: That is right. That is what he does now and so they are going to continue to make those kinds of decisions.

Ms Oddie Munro: The no-fault benefits will provide for rehabilitation and I think it is one of its broadest definitions. I think under the current no-fault benefits that you would receive now under insurance policies, you would get none of that kind of occupational or vocational therapy included. The phrase you mentioned that made me want to at least ask for your opinion as to what you thought of the rehab benefits was that getting the dollars has allowed you to get your life together in another direction to sort of compensate in some way for all of the other physical things you had not been able to do.

Mr Santorelli: Exactly.

Ms Oddie Munro: On the rehab benefit side—I am not now talking about the right to sue—I think that the access to additional amounts of money, and in some cases access for the first time, allows professional people to work with you to that end. Do you not think there is any benefit in that at all?

Mr Santorelli: There is benefit in the rehab program. You upped that limit to \$500,000. Let me give you my instance. I went back to college. It cost me \$500 in tuition fees and another \$500 in books. What good is the \$500,000 to me? What

happens to my loss of income for those years? You are taking away my loss of income. I had a good job. I was making good money. You are not letting me gain that money back. You have to rethink this legislation. People cannot go on with your \$450 a week. That is not enough. You have to compensate them for their loss of income, 100 per cent.

Ms Oddie Munro: Timely rehabilitation, though, may have been opened up a lot more scope in terms of your physical capabilities. Evidence seems to suggest that under the current benefits people were not treated or who did not receive access, for whatever reason, to the amount and scope of rehabilitation that they needed.

Now, if that is not the truth, maybe we need to take a look at that whole complete area of rehab because timeliness indeed is a factor in returning you, not completely the way you were, but at least to allow you the kinds of activities that may not have been there if you were not treated as fast.

Mr Santorelli: The rehabilitation program, how is that going to cover—let's say I was making \$15 an hour at the elevator at that point in time. I got a job or I got rehabilitated to a job that pays me \$8 an hour. What happens for the rest of my life for that difference in income? Why should I have to take a loss of income when I was an innocent victim in an accident?

Ms Oddie Munro: Are you receiving equal income now?

The Chair: I am going to have to interject here.

Ms Oddie Munro: Are you receiving equal income now after your court settlement?

Mr Santorelli: I am not sure what the wages—

Ms Oddie Munro: You said you lost—

The Chair: I am going to have to interject. Thank you, Mr Santorelli, for your presentation.

From the Thunder Bay Insurance Brokers' Association, Mr Kondreska. If I am not pronouncing that correctly, help me. Perhaps you could identify the individual with you. We have 15 minutes. Please proceed. The clerk has distributed copies of your presentation.

THUNDER BAY INSURANCE BROKERS' ASSOCIATION

Mr Kondreska: My name is Lorne Kondreska and I am speaking today on behalf of the Thunder Bay Insurance Brokers' Association. I am the president of the association. Also with me today is Terry Taylor. He is the assistant general

manager of the Ontario Insurance Brokers' Association.

Insurance brokers are the intermediaries between the insurance company and the consumer. We are the people who deal directly with the public. We do not represent any special interest group. Therefore it matters not what form the product takes as long as the public welfare is taken into account.

With this in mind, let's first take a look at the present system. The cost to the motoring public is high and the premiums are constantly increasing. There is a tight market situation causing high numbers of otherwise normal drivers to be placed in the Facility Association.

As an aside, here in northwestern Ontario we probably have about 25 major insurance companies doing business. Most of them have some formula for accepting auto insurance right now, whether it be one auto with one home owner's or a different ratio in dollars, but it still comes out as tied selling. It makes it awfully hard when you imagine, as you well know, that the average family has two vehicles and then their sons and daughters with vehicles. It is just about impossible to place some of this business with normal companies.

Insurance companies cannot predict with any degree of accuracy their underwriting losses and therefore are unwilling to take on more auto volume. In short, the current system is not working.

1550

The proposed legislation, while not flawless, is a step in the right direction. Cost-wise, the premium should stabilize. This will help those drivers who are on fixed incomes, as well as young drivers just starting out. Currently, there are many young people going to colleges and universities who cannot afford to pay the current high prices and therefore do without automobiles.

One good point in the proposed legislation is that the consumers, including those insured in the Facility Association, will have the choice of monthly billing. This is a definite help to students and young people starting out on their first full-time jobs.

Understandably, the cost of claims should decrease and thereby relieve the tight market situation. This, in turn, would help to depopulate the Facility Association, allowing more drivers to obtain normal rates. The new system is structured so that payment will be made on a first-party basis; that is, each insured will deal with his or her own insurance company. This is

great, as it will avoid the delays currently taking place—for example, waiting for the third party to report the accident to his or her insurance company. Not only that, we have a number of adjusters in town who, regardless of whether their client is charged or not, insist we have to wait that 10 days to get the police report. In the meantime, our client is sitting idly by waiting to get his vehicle fixed.

The excluded-driver endorsement will be well received. Currently, far too many spouses are penalized because of the bad driving record of their partners. Two drivers end up being placed in the Facility Association when, in fact, one is completely accident- and conviction-free. The excluded-driver endorsement will stop this practice.

In conclusion, I can tell you that in dealing with the public, brokers find that their clients are very price conscious. The clients are also very keen on dealing with a company that is going to be in business the next time their insurance rolls around. We feel that the proposed legislation will allow auto insurance to once again become affordable and available.

I would like to make a comment at this time. I find it ironic that a few people today have mentioned that they do not mind paying the high price of insurance. In fact, our colleague over here from a certain party elucidated that response from one of the people making a deposition. Yet, it was his party that has been screaming all along for lower insurance rates. The whole deal is about price, and this is a step in the right direction.

This concludes my prepared remarks and I will be pleased to answer any questions you may have at this time.

Mr Kormos: We have been told by virtually every insurance representative who has come before this board that this plan does not provide the same coverage as currently is provided but that what people will have to do is buy extra coverage. I am sure you have heard those comments.

Mr Kondreska: Yes.

Mr Kormos: Now, the problem is that the insurance industry insists that premiums would have gone up 30 per cent to 35 per cent. Let's assume for the briefest of moments, and no matter how difficult it might be, that they are correct in that regard. What costing has there been for the total insurance cost of the driver not only once that driver pays his eight per cent increase that the government virtually promises but once that same driver pays for the extra

coverage that all these insurance people are coming and telling him that he is going to have to buy if he is going to have protection or coverage that is equal to what he has now?

Mr Taylor: That is not an accurate representation of the facts, Mr Kormos. As a matter of fact, the vast majority of people in this province are going to be getting more than they have now, because the accident benefits are going to be increasing over the current levels. The only people who are going to have to buy additional coverage are those people who earn in excess of \$30,000 a year. For the people who earn less than that, their coverages are going to be going up, the benefits are going to increase and their premiums are going to be either the same as they are now or, if you live in Toronto, eight per cent more than the average.

Mr Kormos: What are the cost implications for the person who has to buy that extra coverage?

Mr Taylor: The cost has not been determined yet.

Mr Kormos: That is so strange. How can we talk about eight per cent increases? I have a feeling that when you come down to the wire, it will end up at 30 per cent to 35 per cent anyway. You tell me that the costs have not been assessed, so I guess we are going to have to live with feelings, be they yours or mine.

Mr Kondreska: For clarification, the zero per cent and the eight per cent increases are applicable to the standard policy. The standard policy is going to provide up to \$450 a week, along with a lot of other benefits over and above what are currently provided. The cost for additional coverages is still being figured out, so it only applies to that relatively minor percentage of the population who earn over \$30,000 a year.

Mr Kormos: What implications costing has the insurance industry done for the impact of this new scheme on things like OHIP, worker's compensation—yes, we have heard estimates of an impact of anywhere from \$25 million to \$50 million that this new scheme will bleed from the worker's compensation system. What are the costings of the insurance industry on the impact of this legislation on worker's compensation, OHIP, welfare, social assistance programs, indeed, even perhaps legal aid?

Mr Taylor: I do not know. I was not privy to those calculations. We are brokers. We are not a company.

Mr Kormos: Wait a minute, but you represent a particular perspective here. Surely to goodness,

those things are of interest to you as brokers, because if you generate costs to other aspects of the community or the province, by virtue of this new legislation, indeed any perceived savings are not there, are they?

Mr Taylor: I think the perspective we are representing here is the fact that the majority of our customers across the province cannot buy readily available, reasonably affordable auto insurance. They are being forced into the Facility Association because the system right now is not working. The perspective we are here representing is to enable those consumers to purchase reasonably priced, readily available insurance, and this is what we see this plan doing.

Mr Kormos: Now, Mr Justice Osborne of the Supreme Court of Ontario and Don McKay, the general manager of the Facility Association, have both reviewed Bill 68, this legislation, and say that if this legislation is passed, more people are going to be forced into the Facility Association, especially seniors, especially business people, especially the unemployed people and the seasonal workers. I suspect you disagree with them. What is the problem? Are these people incorrect or are they lying?

Mr Taylor: Like you, Mr Kormos, they have their own opinion on the effect of the legislation.

Ms Oddie Munro: I would just like your opinion on a quote that Mr Justice Osborne gave 1 December 1989 at a conference of lawyers. I will just read you the statement. "Mr Justice Osborne was also not sanguine about the government's claim that no-fault accident benefits would be delivered promptly without the need for costly and time-consuming litigation. 'If history is any guide, there won't be any change in the no-fault benefits, because insurers didn't pay them before and they won't pay them now,' he said, only half jokingly."

How do you react to that? It is a pretty serious statement and I am sure there are lot of nonlegal people reading these kinds of concerns, and I think he is a concerned judge. Is it the case that you, as brokers, will not be able to find insurance writers, or if you do find them, they will not follow through on no-fault benefits, and have they not followed through in the past?

Mr Taylor: It is going to be legislated that they have to follow through. This is one of the good parts about the legislation, that those benefits have to be delivered on time or else they are going to face a penalty.

Mr McClelland: Actually, I did not know it, Ms Oddie Munro; I was going to ask, but it sort of

flows, I suppose, from what I wanted to pursue, the first-party benefit aspect. I asked one of our witnesses this morning, an insurance broker, and I would like to ask you, sir, what you perceive the effect will be with respect to the consumer, the produce and the cost of that product to the consumer, given the fact that, under the proposed legislation, we will be moving from a third-party pay over to a first-party benefit, particularly as it seems to most of us who go out and buy insurance, the person that we have contact with is the broker. The product we are getting is from somebody else out there. It is the insurance company, and really, we think, most of us, when we are buying insurance, we are buying it from our broker. What type of position is that going to put you in in terms of the product that you are able to sell to your client?

1600

Mr Kondreska: Well, first of all, I want a product that my client is going to be happy with, because he no longer is going to be sitting and waiting for a third-party insured to pay him. He is coming to me. If he is coming to me, we want to look after him very diligently. I want that client to renew with me.

Mr McClelland: How is that going to help with costs?

Mr Kondreska: Well, cost-wise, I think it is going to speed up things. I think it is going to hold costs. I do not think we are ever going to get a decrease in rates, but I think it is going to hold costs exactly as they are today.

Mr McClelland: Would there be any foreseeable impact on insurance companies? We have heard many accusations thrown about, without any factual basis, that then insurance companies are always loathe to pay. How is that going to change, if at all, now that we are moving to a first-party-pay basis?

Mr Kondreska: First of all, I have to admit I do not deal with companies that are loathe to pay. I have not perceived that problem or had that problem. We, as brokers, seek out better companies. We want ones that are willing to step forward and pay their claims properly, and I think the company that is loathe to pay is going to be the low man on the totem pole. He is going to lose out. He is going to go out of the business.

The Chair: Thank you very much, gentlemen, for your presentation.

The next individual, Mr Guertin, is not here and his lawyer, Mr Lenardon, is going to be making a presentation on his behalf. The clerk has distributed copies of the brief. Sir, for the

next 15 minutes the committee time is yours, and if you could leave us some time for some comments and discussion, we would appreciate it. Please proceed.

FERNAND GUERTIN

Mr Lenardon: Thank you, Mr Chairman. The reason my client is unable to be here is his ongoing difficulties with litigation. He had back surgery and is recently out of hospital and so was unable to attend.

Now, my client's name is Fernand Guertin, and he was involved in an accident on 17 January 1987. His wife's name is Lucille. This man was 31 years of age at the time of his accident. He had been married less than a year, and they were expecting their first child in May 1987. He was unfortunate enough to be struck from behind while his vehicle was parked waiting for the light to change. His wife was with him. They had their seatbelts on. They were shaken up pretty badly. Fortunately, his wife suffered relatively minor injuries to her back and then soon recovered, and outside of a lot of hysteria and concern about the child, did not have anything of an ongoing nature.

Fernand Guertin, on the other hand, is a different situation entirely. This man was a truck driver for over 10 years with Great Lakes Forest Products and I think typifies the average sort of worker in a city such as Thunder Bay. He has a grade 8 education. In his particular case, he is a very slow person academically. He has a relatively low intelligence quotient, and I mean very relatively low.

This man was off work from the accident of 17 January 1987 until August 1987 with interspersed attempts to try and get back to work. Here is a man who loved his job of driving a truck, has never done anything else, has a very low propensity for doing anything else and was worried sick about losing his job. So he went back despite a great deal of pain, and he paid for it by suffering nights and weekends as a result of trying to do his job of driving an average of 11 to 13 hours overtime a week on top of his normal 40 hours.

He then worked again trying to make due until 19 December 1988, and he was off for five days. He went back to work again 3 January 1989, went off work and has been off to the present. He had back surgery in November and has just recently come out of the hospital and is at home, unable to get out of his bed.

The doctor is quite optimistic. He is hoping that the surgery will be successful and that this

man will be able to return to work with some degree of disability. Now, he will not know that until May.

So, we have a man who may require lengthy retraining. He may not be retrainable. But odds are, if the surgery is reasonably successful, he will not be driving a truck again or making the level of income he was. As I see the level, this man would be in a situation where he would have a tremendous long-term loss of income. He would be able to get on with most of the things in his life, but would never be able to get into any kind of employment that would even begin to touch the level of income he was getting as a truck driver. We have psychological reports that indicate his likelihood of retraining is not that great for some other type of work.

To show the insensitivity sometimes of insurers, he did have disability coverage through work. At one point, the disability insurer wanted him to have an independent medical. He went to Winnipeg and co-operated with them. He had a lot of inconvenience and discomfort and pain to himself. He endured about a five-minute medical examination by the doctor provided by the insurance company, who did not do any physical examination, and as a result of this, he was told he was cut off for a couple of months.

As a result of intervention on his behalf and a law suit started, he was finally reinstated. In the meantime, his company told him that he was in danger of losing his job. He had to get the union involved because the policy essentially was, "If you don't qualify for disability benefits and you aren't at work, you lose your job."

The doctors who treat him are all telling him, "Don't work." He has gone through a year and a half of trying to work, on and off, and going through tremendous pain while one doctor is telling him, "Have your fusion."

This is a man who has been very scared throughout all this time and suffering a loss of income. This man was making \$974.35 a week, with overtime. His base pay without overtime was \$634. His accident benefit insurer worked on the basis of 80 per cent of \$634.40, because that was his regular pay. They did not consider the overtime in the calculations.

So, as a result, he received \$385 a week from his disability insurer and \$122 from his accident benefit insurer, for a total of \$507. His net loss per week was \$467.35, which would be totally unrecoverable under the present plan.

If, as may be suggested, the calculation would include the overtime, and I certainly have seen nothing that would ensure that that would be the

case, he would still be losing \$200 a week, never recoverable from anywhere. This is what this poor victim, who has gone through a lot of problems, is going to get under this program.

That is just the start. If, as I have suggested, he does qualify for some rehabilitation and is able, after the surgery to go back, what is he going to do? If he cannot drive a truck, he is never going to earn the kind of money he was doing anything else, this particular man. That is the thanks he is going to get for having been injured, having gone through two children which have now been born, having had his total life disrupted at the early stages of a marriage, at a very young age. That is what he has to look forward to.

On top of that, his pension is going to be drastically reduced from what he would have had to look forward to, had he continued on in his previous occupation. He is going to lose holiday pay, which would work out to about \$4,300 a year, which he will not get and will not be compensated for it.

1610

On top of that, at the moment, I suggest that this man is probably looking at \$70,000 to \$100,000 in compensation for what is going to be long-term pain and suffering, which in all likelihood he would never, ever see under this legislation because he would not qualify for the ability to sue because of meeting the threshold, unless the surgery is totally unsatisfactory.

So I put this case before the committee because it is not an unusual or rare case. This is the sort of thing you are going to see all the time. And just to throw in, since I see my time is ending very quickly, we have the added problem, what do we do with this man in trying assess him along the way? It was difficult enough in the circumstances with his wanting to go to work and trying all the time, but if the surgery appears to be successful and then two years down the road he finds he cannot work again, I have no assurances I can give that man that he would be able, under the proposed legislation, to ever sue—he is past the limitation periods—or that he would qualify for anything.

It is all fine for a member of this committee to sit here and say, "Ma'am," of "Sir, you are injured; you will meet the threshold." That is crap, to be quite honest. There is no way anybody can sit here and say what that threshold will be. The intent of it is to eliminate 90 per cent-plus of the claims. So to sit here and say what is going to be considered to be the threshold, nobody can tell you that, except to show the history of Ontario, and that history shows that everything is based on

economic loss. If you can work, essentially that is what your calculations are based on. That has been the history of this province, and I suggest that is how it is going to be translated.

The Chair: Thank you. We have Mr Kormos and Mr Nixon for three minutes.

Mr Kormos: I understand now that lawyers like yourself in cities and towns, big and small, across Ontario, as often as not, when a victim comes into their offices from a motor vehicle accident, carry that client. Indeed, as often as not, lawyers like yourself end up carrying him at least for some of the initial and sometimes for a good chunk of disbursements.

My feeling is that with this threshold and the uncertainty that is associated with the threshold, there are going to be a whole lot of people who are never going to have an opportunity to find out whether or not they even meet the threshold, but because of that uncertainty, lawyers like yourself and like so many others are not going to be in a position to assess it so that they could say: "No problem. We'll get the ball rolling because at some point down the road there is a strong likelihood of success." Let's talk about that a little bit.

Mr Lenardon: That is a very good observation. Right now, when you have a person who is injured, the point was raised that it is all or nothing. It is all or nothing in terms of the very few cases where liability is very questionable. In most cases, you know essentially there is going to be liability. It is a matter of how much, 100 per cent or a portion of that. You can then, in most cases, talk to a bank official with that person and give him some assurances there will be more money forthcoming and the banks will go along with him and assist him. They know there is going to be a general damage award.

Now, that person, in deciding whether to proceed with a claim or not—there is a lot of preparation in developing that claim and it may be six months, a year, a year and a half or two years before you know what type of claim you are going to have and the long-term effects—is going to be very reluctant to try and run up those kinds of costs, especially when, under this legislation, right up to and including the time of trial, you can have a second or third opinion of a judge due to some changes and he can be thrown out and left with his own legal costs, plus quite possibly the insurance company's legal costs, and not receive a farthing.

Mr Kormos: The fascinating but drastic and terrible thing is that it will not be a matter of

liability. You will have people for whom liability is not an issue.

Mr Lenardon: That is correct.

Mr Kormos: And it is not that they are not injured, because they could be radically, severely, tragically injured, yet they will not pass that fine line. So you have these people who will be left with incredible fees, and not just legal fees but all the other things, the medical examinations and those things. But then there are also the people for whom lawyers will not be available, because lawyers will have to say: "Look, I cannot carry this because I am uncertain as to the outcome. I would love to be able to do this for you, but my office simply cannot bear the expenses of the disbursements," let's say.

Mr Lenardon: The thing is now, it is not all or nothing. It is a question of, how much is that person entitled to? In the future, it will no longer be that. You may be perfectly innocent, but it is an all-or-nothing situation and nobody can tell you at this point in time how narrow the point is in deciding whether you reach that threshold or not. Insurers, particularly in the early cases over the next couple of years, are going to take, I expect, a lot of these to the Supreme Court of Canada. We all know the costs involved in that.

Mr J. B. Nixon: Thank you for appearing before us. I just want to deal with one of your suggestions.

On the one hand, you are suggesting that there is a great deal of uncertainty surrounding the threshold in the sense of which cases will exceed the threshold and which will not. Do you agree with that?

Mr Lenardon: There is no question about that.

Mr J. B. Nixon: I would suggest to you then in that case it is very difficult for anyone here to definitively say that case will not meet the threshold.

Mr Lenardon: If you take into consideration, as I mentioned, the history of how the threshold would be conceived, I think you will have to appreciate that the likelihood is that there will be a very small number of cases achieve that threshold, and it will be based largely on economic loss, ability to work. But you do not throw out everything you have right now and say "Trust me" when you are putting in a plan that is clearly geared to try to save substantial amounts of money that are being paid to victims at the moment"

Mr J. B. Nixon: I am not saying "Trust me."

Mr Lenardon: That is what you are saying to me.

Mr J. B. Nixon: No. I am not saying anything other than that the legislation puts this issue before a judge for determination. My question really has to do with the motion that would be made to a judge for determination of whether a case fits a threshold. You raise, in my mind, a valid concern about the costs of that. Assuming there is to be a threshold, do you have any suggestion on how costs should be treated?

Mr Lenardon: I think it has to be coupled with limiting the number of kicks at the cat you get. You should not be able to go as many times as you want and judge shop from a defence standpoint.

Mr J. B. Nixon: It is only twice.

Mr Lenardon: But the cost.

Mr J. B. Nixon: You made the suggestion that one of the major concerns on whether you would even try or whether you would oppose a motion or deal with a motion is the cost in so doing. Can you think of another way of dealing with the cost so that there is not such a burden on the plaintiff?

Mr Lenardon: Again, it goes against what the intention of this program is, as I have seen it espoused, but the only way I can see of doing it is that there be a guarantee that a person who felt he had a shot at it and wanted to take it would be paid for his cost in preparing and proceeding to get determinations on that issue.

Mr J. B. Nixon: You would exclude from that, I assume, whatever the court might deem to be frivolous and vexatious stuff, its general power.

Mr Lenardon: At the moment, with the system we are in, whoever is successful normally is entitled to his costs. That is the system we have.

Mr J. B. Nixon: But in the sorting-out period—you raise a valid concern that there is uncertainty as to what the threshold is—a plaintiff may legitimately believe he exceeds the threshold, and you are suggesting he should not be penalized for making a claim on that basis. I think we would both agree that a court is entitled to dismiss frivolous and vexatious actions, but we are really not talking about frivolous and vexatious; we are talking about serious claims. How do you treat the cost? It is an unusual and new situation.

Mr Lenardon: I would put that back at you. How do you know the extent of an injury? I could give you references to numbers of files I have

been involved in—and I mean substantial numbers—where initially it appeared that you are looking at a \$5,000 or \$10,000 whiplash or less and it turned out to be very debilitating and you did not know this for two years really or longer. It has ended up being a \$500,000 or more claim. That is not based on frivolous amounts being paid to somebody.

Mr J. B. Nixon: No, I agree.

Mr Lenardon: It is being paid on a realistic situation. As I see it, many of those things will never get to the courts, will never be prepared, to even find out whether they can get to the courts because it is expensive to prepare even the wait.

Mr J. B. Nixon: We are not at odds. I am just trying to look for a solution to dealing with that expense being a deterrent.

Mr Lenardon: You would almost have to guarantee that for a period of two years, three years or whatever, for a shakedown period, for anybody who felt he had a shot at it, his costs were paid to take that.

Mr J. B. Nixon: That might be one solution.

The Chair: Thank you very much for your presentation. Just a point of clarification on the overtime from Mr Endicott.

Mr Endicott: In your presentation, you talked about your client's only being compensated for his basic wage, not the overtime. I just draw to your attention the provisions in the proposed accident benefit draft. There are really two tests under which the employment income would be evaluated. One is the grossing out for the previous four weeks or the previous 52 weeks, whichever is greater. That is the test that will be applied, and that was not in the existing schedule C.

Mr Lenardon: Yes, I appreciate that.

The Chair: Dr Melnyk, the clerk has distributed copies of the presentation. The next 15 minutes of the committee's time is yours. If you could save some time for some questions, answers and comments, we would appreciate it. Please proceed.

1620

WALTER MELNYK

Dr Melnyk: I was not aware that you had not received these briefs before. I was assuming that you had, so perhaps we had better go over it in some detail. First of all, maybe a brief introduction to myself.

I am from Thunder Bay. I came back in 1966 and have been at Lakehead University as a

professor of psychology since then. I also do considerable consulting in the community, including the two general hospitals, with workers' compensation, Canada Manpower, and in addition, I have recently started a pain clinic in St Joseph's General Hospital.

I also have had some experience in private work in the assessment of people who have had injuries because of automobile accidents, and most recently I have led up the group which have counselled the people from the Air Ontario crash, which I am going to present to you as an indication that people can suffer psychologically and emotionally without having a scratch on them, especially when they have fallen from the air out of an airplane, and to some lesser extent, when they have a car crash as well.

I am also on the board of examiners for the province in psychology and I am on several task forces of the professional group, the Ontario Psychological Association. I am aware of the brief that they have sent to you or are in the process of sending to you, so I will try not to overlap too much with what you have heard before. Have you heard from other psychologists before?

The Chair: Yes.

Dr Melnyk: Toronto?

The Chair: We have had the psychological association before us in Toronto, that is correct, as well as a number of psychologists.

Dr Melnyk: There will be some overlap, but I will try to make it more relevant then to my own experience in Thunder Bay.

There are four areas of disability following car crashes which I have some experience in dealing with. Maybe I can go over these briefly with you.

The first is pain. The pain clinic that we have in St Joseph's hospital, which I run, is the first and the only pain clinic we have right now between Regina and Toronto. There are a few in Toronto, but there are none between Regina and Toronto other than the one in Thunder Bay.

The referrals we get are people who have chronic pain, who either the medical professionals could not help or they have helped to the best of their extent and the pain still lingers on. Chronic pain is well defined now in the literature, a well-accepted problem that people can have, so that is one area where I have some concern.

Second is people who have depression, anxiety or tension. For example, I had a client whose daughter was killed in a car accident. She is severely depressed, cannot go back to work, and I would worry about what your legislation would intend for this kind of client.

Going back to the first one with pain, I would wonder too how you would handle the chronic, debilitating effect of pain, not just in not being able to work but also in the quality of life and how it affects that. All of us have some pain to some extent. Can you imagine a back pain resulting from a car accident, which would affect the quality of your life, including your sex life and everything else? It is debilitating. It does affect, at the minimum, the quality of your life.

The third area is a more formally defined area, and that is post-traumatic distress syndrome. I have had a lot of experience with this over my last 24 years, and more specifically, more experience than I would have wanted because of the Air Ontario crash. I am the head of the team which has counselled the survivors and the relatives of the victims of this crash. I can assure you, as I have in my brief, that a few of those people, those who survived, had physical injuries because of the air crash, but a lot of them, about 21 of the ones that myself and my team have seen, do not have a scratch. But I assure you, they are very severely disabled. Only two of them are able to fly again, at this point. Some of them have to fly because of their living and are on disability pensions, which again has severely affected the quality of their lives. There is the danger of leading to marriage breakups and everything else.

If there is a danger—I put it as a question because I admit I am not as familiar with the intention, and often the wording of what somebody wants to do is different from the intention of what he wants to do. As a professor, I am often familiar with the discrepancy between intention and wording. If it is the intention of this legislation to omit these categories of people, I would be most upset.

I would say that the fourth concern has to do with brain injury, of which we have an increasing amount because of car accidents, I understand. Again, sometimes the medical profession will use us to indicate more subtle examples of brain injury, which are things like cognitive disturbances—for example, memory, disturbances in confusion, disturbances in not integrating things the way you should integrate them in your mind. These are things that can happen, and again, they are well established.

If I have not convinced you, I think Dr Kaplan in Toronto can convince you—this is his area—that brain injury which leads to other than severe physical trauma, the way the act would define it, can lead to very debilitating things. Again, I

would be upset if your legislation did not somehow allow for this.

The other concern where I agree with what OPA has already told you is that there appears to be a provision for a no-fault supplement for clients to receive assessment and treatment for psychological and mental injury, but I do not see anywhere any reference to assessment of treatment done by psychologists. I do not see an explicit provision for this. I really cannot understand that omission, if it is intended to be an omission.

If you are familiar with the health professions legislation review, a review that the government has done and which I understand was tabled—was it tabled yet?—there was a long argument there which is, to some extent, still ongoing with the medical profession about who should do the diagnosis. The commission, the HPLR group, recommended that psychologists could be among the group that do diagnoses. I think the omission, whether intentional or not, of psychologists from the list of people who can do these things is unfortunate and, I think, a little bit silly, because who else but psychologists can diagnose some of these things? You do not go to your general practitioner, I do not think, to look at the cognition and mental or emotional problems that happen because of a brain injury.

I do not know what else I can say at this point, except that if this bill went through and people were not able to be compensated in some way for these injuries, it would not represent a significant loss of income for myself, so I do not argue from a strong, vested point of view. There is, unfortunately, only too much business in northwestern Ontario for psychologists. We are short 14 psychiatrists in northwestern Ontario, which is another thing to talk about at another time, but the result of that is that there is a tremendously increasing load on psychologists in the city. If this business was taken away, there are a lot of other things I could do, so I am arguing, I hope you understand, from the point of view of the clients I have seen over 24 years who are affected in the ways that I have said.

1630

Mr Pouliot: I am particularly pleased that Mr Melnyk has taken some time for a very appropriate reminder of the Air Ontario tragedy. We are also privileged to have Mr Zaitseff, who I understand is counsel and very closely associated, very familiar with the case. Thank you for your presence.

This kind of tragedy illustrates perhaps better than any other the omissions, and there are a

litany of omissions in this legislation. It is not so much what it says as what it fails to cover, to encompass. For years, people living up north got accustomed to reading or watching calamities or shortfalls, mishaps that were happening elsewhere but often it was too distant, too remote. In this case, it is not that you almost had to be there, but it touched profoundly the lives of many people, and your presentation does attest to that.

If I may draw, doctor, the following parallel or analogy, that had this tragedy been on the road, with a bus, for instance, involved in a collision where fire would have played an important role; where people would have been, in some cases, killed and in others injured, but in this case also, emotionally disturbed; were it, for instance, that as a condition of employment, you would have to travel to work but you would be so traumatized, doctor, that you could not bring yourself to do it now or to do it in the near future, under the proposed legislation, there is a blatant omission.

Is it your understanding that a person who would be suffering from, I do not say "after-shock," but from the effects of that tragedy, would be just as injured as someone who would have a broken leg or a broken rib? In fact, in some cases, the injuries, if you wish, could be much worse, and certainly very long-term. Does it not strike you as ironic, to say the least, that someone with a broken nose would be entitled to some compensation and yet someone, on the other hand, who could be marked for life and who is many, many times sicker or more affected would not receive one penny, one dime, absolutely no compensation at all? As a lay person, it does not seem to make much sense. I am interested in your comments, doctor.

Dr Melnyk: If you are asking me, is it easier to heal a broken leg than a broken mind or a broken spirit or broken emotions, that answer is yes. There are many times in my life I wish I were an orthopaedic surgeon, because I think the results of their successes are easier to prove. It is a very tough business, but you do not ignore it. I mean, who at this table could ignore that we have any of those four things evidenced in life today? How to deal with that, I think, becomes the problem. Sure, you cannot ignore it. What are you going to do with it? How are you going to deal with it?

It happens in car crashes. It happens in plane crashes. It happens in bus crashes. You can get post-traumatic stress syndrome. By the way, that is a recent thing, post-traumatic stress syndrome. I have a friend who is a psychologist in British Columbia, to make it short, whose job five years ago was to deal only with post-traumatic stress

syndrome. One of his first cases was somebody who fell 1,000 feet from a hydro tower and his safety belt stopped him 10 feet from the ground. There was not a scratch on his body—not a scratch—and of course, workers' compensation and various insurance providers argued, "What's the matter with him?" You try doing it and then tell me whether or not you are the same person you were before that.

He has many stories like that, of his first four or five clients. This disorder got recognized through the courts, first in BC and then in New Brunswick, as a compensable disorder, and it was not that long ago.

Ms Oddie Munro: Mr Justice Osborne, again at the same conference I referenced earlier, stated that sometimes the more words that are used in the threshold, the more difficult it is to apply. So I would like you to tell me what your proposed amendment would be. You do not have to do it now, but certainly the Ontario Psychological Association has been asked to come up with its form of amendment of the threshold.

Second, other people have come before us, as you are, saying that in the regulations themselves and the description of benefits, it is helpful to specifically mention—in your case, you have mentioned post-trauma disorder and chronic pain. Third, just to allay any of your feelings that we have not considered psychological manifestation of trauma, either as a result of physical manifestation or physiological manifestation, I should say that there is considerable mention all the way through the definitions of psychologists treating a psychological manifestation of the victim or the family.

We have a problem, and obviously there is a lot of sympathy on inclusion of that, and a lot of recognition. I am a psychologist but not a practising psychologist. In your mind, what are your suggestions for the regulations, or do you think that a body of health care practitioners would actually agree that a combination of these disorders—and psychiatric disorders differ from psychological disorders, even in recognition by the two parties—so that the client benefits? Maybe that is a lot of gobbledygook, but I hope, as a psychologist, you can understand what I was trying to say. What suggestions do you have then?

Dr Melnyk: What suggestions do I have for an amendment? I cannot give you one right now, but I will promise that I will work with the Ontario Psychological Association, because we are meeting on 14, 15 and 16 February. I will be meeting with that group—Dr Berman, I guess her name

is—and we will be doing that. I welcome that as a suggestion for dealing with the problem, if that is what you are saying. I am not sure what your other questions were.

Ms Oddie Munro: I think there seemed to be some consensus out of the professional people appearing here and elsewhere that in fact we do understand, whether it is permanent serious or serious, what kind of presenting injury would give people some hope that they could go through the threshold.

Mr Melnyk: Right.

Ms Oddie Munro: When you look at the psychological case then, and you have already mentioned the unfortunate accident in Dryden, what is it that your professional field could do that would be acceptable and that insurers would understand?

Mr Melnyk: Okay, again you are asking, I think, for some wording on how we would agree on a diagnosis for a compensable injury. Again, I have some ideas on that because I have done a lot of talking on it. But for the drafting of wording, again, I think that is something we can do with OPA. What you are asking is, what agreement would there be on something like post-traumatic

stress syndrome and how easily could it be identified for compensation? I understand the question that way.

Ms Oddie Munro: Why can you say it so much more simply than I can?

Mr Melnyk: Because my job is to talk seven hours a day about things like this, I guess. I agree, if you want that to be done, I think the OPA would be the group to do it and I would help it.

The Chair: Doctor, if either through yourself or the OPA—I think we have made offer to the OPA as well. If they would submit that to the clerk, it would certainly be part of our deliberations. Again, thank you for taking time to appear before us today.

Just for the committee members' information, I would remind you that most of us are flying out—hopefully, all of us are flying out—on a Canadian flight tonight, leaving at 7:40. I would suggest that we try to catch the hotel's van some time between 6:45 and seven o'clock.

The committee stands adjourned until tomorrow morning at 10 am in Toronto.

The committee adjourned at 1638.

CONTENTS

Wednesday 24 January 1990

Insurance Statute Law Amendment Act, 1989	G-553
Thunder Bay Law Association	G-553
Lakehead University Student Union	G-557
E. W. Stach	G-561
Organization for the Multi-Disabled	G-564
Douglas Smith	G-569
Dr Linda J. Rintamaki	G-575
William R. Bell	G-580
Rolf Tornblom	G-581
Afternoon sitting	G-585
Ontario Secondary School Teachers of Thunder Bay, Ontario	G-585
Leslie Mutch	G-591
Sheryl Reid	G-593
Robert J. Lennie	G-596
Connie Murdoch	G-599
Margaret Ager	G-602
Dr V. P. Zaitzeff	G-604
Ralph Santorelli	G-607
Thunder Bay Insurance Brokers' Association	G-610
Fernand Guertin	G-613
Walter Melnyk	G-616
Adjournment	G-619

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Individual Presentations:

Lenardon, Donald J., Legal Counsel on behalf of Fernand Guertin; with Martin Lenardon Scrimshaw

Melnyk, Dr Walter T.



No. G-12 1990

Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on General Government
Insurance Statute Law Amendment Act, 1989

Second Session, 34th Parliament
Thursday 25 January 1990

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers



CONTENTS

Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 25 January 1990

The committee met at 1002 in room 151.

INSURANCE STATUTE LAW AMENDMENT ACT, 1989 (continued)

Resuming consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

The Chair: I am going to recognize a quorum. The chairman has a bad habit of starting on time and we have the approval from the other parties to do so.

Welcome to the standing committee on general government, the Dominion of Canada General Insurance Co, Mr Waugh, Mr Christie and Mr McCubbin. Gentlemen, you have half an hour of the committee's time. If you could possibly identify yourselves for the benefit of Hansard and the television audience, the next half-hour is yours.

DOMINION OF CANADA GENERAL INSURANCE CO

Mr Waugh: Thank you and good morning. I would like at this time to thank you for allowing us to appear before your committee. Now I would like to introduce my colleagues and myself. My name is Don Waugh. I am the president and managing director of the Dominion of Canada General Insurance Co. On my left is Lorne McCubbin, who is our vice-president of claims, and on my right is vice-president and chief actuary Jim Christie.

Our company was founded in 1887, more than 100 years ago, and our first president was Sir John A. Macdonald, who held that office until his death in 1891. The company has grown with Canada and today we have operations in all provinces and the two territories. It is a purely Canadian-owned company. We are a subsidiary of E-L Financial Corp, which is a public company listed on the Toronto Stock Exchange.

In Ontario, where 150 insurance companies compete, we rank the ninth largest. We have 22 offices in Ontario, we employ 600 people and we have 800 brokers representing our company. Our offices are spread across the province. They are not only in urban centres, but in remote areas such as Sault Ste Marie, Sudbury and Thunder Bay. In Thunder Bay we have a branch at which we employ 40 local people.

We began underwriting automobile insurance in Ontario in 1914, more than 75 years ago. In 1989, Ontario automobile insurance represented 44 per cent, or \$160 million, of our total premium income of \$355 million.

In the following pages we will show you some important graphs which you can look at later at your leisure. I just want to say that that is a brief description of our company. We have been continuously in business for more than 100 years.

With respect to the legislation which is before you, I have a few remarks. These will be more elaborately addressed by my colleagues and amplified by them. However, what I want to say is that in the last few decades we have seen the population growth in Ontario rising at an accelerated pace, and the number of automobiles have been growing at a faster pace than that population growth.

Those factors, together with the higher performance and the increased sophistication of recent-model automobiles, have caused automobile accident frequency and severity to rise. The result is that the present automobile insurance reparation system requires premium levels that have met severe resistance from the consumer.

I have been in the property and casualty insurance business, which includes automobile insurance, for more than 40 years. During that time I have seen many changes, mostly consumer cost-driven. Bill 68, which is before your committee, is additional evidence of cost-driven reform.

Our company has for many years supported the concept of a total no-fault reparation system. This concept of compensation for those injured in automobile accidents is not new, but goes back a long way. It was first conceived by an American judge, Robert S. Marx, in 1925. It has been studied extensively and exhaustively since then and in the last few years or decade, we have seen no-fault introduced in several jurisdictions, mostly in the United States; but it is in Quebec and it is in New Zealand.

Unfortunately many of these no-fault programs have been watered down, and therefore are not very successful. But there have been significant successes. It is considered by many that no-fault costs less, it is quicker and it is

fairer; our objections to the present system of tort compensation for those injured in automobile accidents are many, but chiefly that it is too slow, it is too costly and it is unfair. Our experience, gained over many years of working in this field, tells us that the public wants these issues

While we prefer total no-fault, we do accept Bill 68 as a reasonable compromise as in our opinion it will do many things. It will constrain present but also future costs; the system will be more cost-effective; it will eliminate in many cases the difficulty of proving fault; there will be more fairness; the gridlock in our court system will be considerably relieved and benefits will be distributed more quickly.

We believe Bill 68 is a major progressive step in automobile insurance reform.

Now, with your permission, my colleagues will amplify on those remarks. I first would like you to hear from our vice-president and chief actuary, Jim Christie.

Mr. Christie: I would like to elaborate Dominion's position on four major issues affecting auto insurance. We are here today because the public of Ontario will seemingly no longer tolerate double-digit premium increases. Prior to April 1987, the insurance companies, ourselves included, operated in a free-market system. Indeed, with 150 companies and no company with more than 10 per cent of the market, it was hard to find a more competitive industry.

Insurance premiums are simply a function of the costs of service provided, and the facts are that the present tort-based system is very costly. Normal inflationary increases in the cost of automobiles and repairs force loss costs to rise. But, in addition, the tort system subjects insurers to much larger increases in costs, something the industry has referred to as social inflation.

The graph on page 8 of our brief shows the latest available actual industry loss costs for 1984 to 1988. Superimposed on that graph you will see trend lines for actual loss costs and the CPI. You can easily see how industry costs have dramatically outpaced the standard CPI inflation measure.

1010

The tort system of awards consistently finds new avenues to reward plaintiffs. The last 10 years have seen our loss costs rise 10 to 12 per cent annually. To cite some of the more obvious examples, we have the Judicature Act and the practice of gross up. These are loss costs driven by the tort system, much of which we are unable to control. Where possible, Dominion has

introduced cost control mechanisms, but nevertheless loss costs continue to rise at twice the CPI rate. Barring a major product reform, the industry will be forced to increase premiums and the consumer will be forced to spend increasing proportions of his disposable income on insurance.

Between April 1987 and June 1990, the Ontario auto insurance industry has been subject to strict rate control. During that period of over three years, premiums have been allowed to rise by an annualized increase of only 5.5 per cent. Over that same time period, the CPI rate of inflation in Ontario is expected to rise by 18 per cent, or 5.6 per cent annualized. That is, for the last three years every auto insurer in Ontario has been able to increase premiums by at most no more than the CPI change.

During that same three-year period our costs continue to rise, because of social inflation, by 10 to 12 per cent annually, or 33 to 40 per cent over the three-year period. Let me repeat, our premiums have risen by 5.5 per cent annually and our costs have risen by 12 per cent. Thus even if premiums has been adequate at the beginning of rate controls, which they were not, they would be now 13 to 20 per cent inadequate.

In April 1987, when the industry was in the process of increasing premiums, rate controls were imposed, keeping the industry at inadequate premium levels. We estimate that by June 1990, the industry will need premium increases of 35 to 40 per cent if the current tort system is to be continued. This is clearly not what the Ontario public wants, yet we as a company are losing money every time we issue or renew an Ontario auto policy in Ontario. The graph on page 10 highlights our problem. In 1987, our return on equity for Ontario auto insurance was six per cent, including all attributed investment income; in 1988, our return on equity for Ontario auto insurance was minus nine per cent including attributed investment income. That is, in 1988 we lost \$8.1 million on \$140 million of premium income. Preliminary figures for 1989 indicate an even poorer result.

No rational company continues to operate for the long run when its prices cannot cover its costs. If the current situation were to continue indefinitely, we would be forced to drastically curtail operations. Indeed, without product reform or drastic premium increases, we expect the regulators will soon force some companies to reduce Ontario writings because of solvency concerns. As you have heard, we have been in the Ontario auto insurance market for over 75

years. To date we have remained in that market because we expected justice and fairness would soon return. For this very practical reason, we support the government's initiative on product reform contained in Bill 68. Without such changes to auto insurance, the industry will simply be unable to deliver a product at a price Ontario consumers are willing to pay.

The product reform initiated by Bill 68 will moderate the need for premium increases, and in addition, there is an important ongoing benefit. We anticipate that future increases in loss costs for those claims transferred from tort to accident benefits will follow the traditional CPI inflation much more closely. That is, the impact of social inflation should be significantly curtailed. However, it will not be completely eliminated, because a great many bodily-injury cases to be resolved will still remain in tort; that is over 50 to 60 per cent of our costs.

Dominion is on record many times as advocating a total no-fault auto insurance system. In today's world of powerful automobiles driven at high speeds on congested highways, a moment's inattention can result in terrible injuries. Before an injured party can recover costs through tort, the system insists that someone else be found negligent. Today 30 per cent of victims receive little or no compensation because they cannot prove someone else was at fault. Looking at the graph on page 4, you will see the significant increase in the number of registered vehicles in Ontario in recent years. This increase has led not only to more congested highways, but also to more accidents.

Rather than resort to the tort system with its lengthy and costly delays, we believe society will be better served by offering all accident victims immediate access to extensive no-fault benefits. However, those enhanced no-fault benefits have significant costs attached and we believe the appropriate quid pro quo for these enhanced benefits is the abolition of the right to tort actions. This will produce a reasonable tradeoff between costs and rapidly available benefits.

Moreover, a system of first-party no-fault benefits will eliminate a significant regressive aspect of the current rating system. Today, under the tort system, insureds with similar driving records pay the same third-party liability premium whatever their income level, largely because they are buying protection against suit by other parties. Under a first-party no-fault system, premiums would vary with the limit of wage replacement selected. The proposed figure of \$450 per week is a reasonable choice offering

significant protection to all, while allowing those with higher incomes who can more easily afford higher premiums the option of electing higher limits to match their circumstances.

On this note, it is interesting to observe that in California, a coalition of consumers, minority and low-income groups, led by the Consumers Union of United States Insurance, has just last week proposed a basic no-fault package to alleviate California's auto insurance crisis.

While we advocate total-no-fault, we believe Bill 68 is a workable compromise.

With respect to deterrence, the question is whether no-fault will have any impact on the propensity to have accidents. Much has been said about the lack of deterrence in no-fault systems. Frankly, we feel this is a nonissue.

First, the near-universal extent of auto insurance has already removed any direct sanction on the individual which the tort system originally imposed. Whether there is no-fault or tort, insurance companies rather than individual drivers will pay the financial consequences of individual driver actions. Today negligent drivers do not directly face the financial consequences of their negligence.

Second, the concept of no-fault applies to the ability to receive benefits, not to the levying of premiums. Individuals will be able to collect benefits from their own policies without having to establish who caused the particular accident. However, the concept of fault will not disappear from insurance rating. Determination of fault through a fault chart will still be necessary to determine if liability or collision coverage will respond to the physical repair of the vehicle. Thus, in each accident fault will be established.

Third, Dominion has firsthand knowledge of a similar system in our Ottawa and Montreal branches. The system has been in operation in Quebec by private companies since 1987 and it works smoothly. Fault has no bearing on the right to recover accident benefits, but at-fault accident involvement is a significant rating factor. Indeed, after 12 years of operation in Quebec, the relative premium level of each classification cell is similar to Ontario. Good drivers continue to have loss costs and to pay premiums significantly less than bad drivers. We do not expect driver actions in Ontario to be altered by the advent of enhanced no-fault benefits and direct compensation.

Finally, I would like to address an issue that has received relatively little attention to date: the GST. It now appears the federal government will implement a seven per cent goods and services

tax on 1 January 1991. For insurance companies, this means that not only will we have to pay the tax on everything we buy and every loss we pay, but also that we will not be able, as most other industries will, to offset the GST we pay. Thus insurance loss costs will rise as a result of the application of GST, and the industry will be forced to raise premium levels to compensate.

The January 1991 effective date poses special problems for insurers. This month we have already begun issuing policies that will incur claims after the GST is implemented, as will all policies that we issue through 1990. The impact of the GST on our loss costs is unknown at this time, but we expect it will create additional upward pressure on premiums in future years.

Now I would like to hear from Lorne McCubbin, our vice-president of claims.

Mr McCubbin: I would like to speak to you on five important points: first, the legal system; second, accident benefits in Bill 68; third, property damage; fourth, tort reform; and fifth, law enforcement.

1020

First, the legal system: In years gone by the tort system has worked well for automobile accidents. But it does not work well today. The legal system has become more complex, expensive and slow. Replacing the tort system with enhanced accident benefits for the majority of claims while retaining the right to legal action for those few catastrophic permanent serious injury cases is a practical way to deal with the volume of automobile accidents that occur in our society today.

Not only does the legal system slow down the recovery to the victim, but we estimate that 30 per cent to 35 per cent of every bodily injury claim dollar does not go to the victim. These costs are solicitor and client costs, party and party costs and defence costs.

In addition, the frequent and unnecessary delays in concluding claims are increased substantially because of prejudgement interest. At a recent industry settlement conference, our company's average percentage paid for PJI was 26 per cent. Although in many of these cases the injured persons were fully recovered at anywhere from three to six months after the accident occurred, they were not settled until, on average, two and a half years later.

At this settlement conference in December 1989 we selected 182 files that should have been already settled. When we extended an invitation to the plaintiff lawyers on those 182 files, only 79 plaintiff lawyers, or 43 per cent, agreed to attend.

Of those lawyers 81, or 45 per cent, would not attend and 22, or 12 per cent, did not even respond despite several letters and telephone calls.

We had a similar conference back in April. We invited 167 plaintiff lawyers at that time; 35 per cent agreed to attend, 46 per cent refused and 19 per cent did not respond.

For those plaintiff lawyers who did participate in the conference, we were able to settle 78 per cent of the claims in April and 72 per cent of the claims in December. We were happy to see those cases concluded but unhappy that 65 per cent of the plaintiff lawyers did not attend in April and 57 per cent did not show up in December.

Despite comments that this committee has heard about the reluctance of insurers to settle cases promptly, we believe that what you have just heard demonstrates that this is simply not true.

I have been involved in claims for 30 years, the past 25 with Dominion of Canada. The goal of our company is to settle all claims as quickly as possible. We constantly monitor the percentage of outstanding claims and immediately take corrective action in any of our branches if we see the percentage rising.

As stated earlier, our company would prefer to have a pure no-fault system. Bill 68 describes the threshold concept and it has been estimated that about five per cent to 10 per cent of those injured persons in automobile accidents will be able to cross the threshold. We do not believe there will be immediate cost savings because, as with other jurisdictions that have introduced a threshold, it will take some time before judicial interpretation finds a workable level that will be used without necessary further reference to the courts. However, we believe that in the long run Bill 68 will substantially reduce costs.

Much emphasis has been placed on the threshold eliminating 90 per cent to 95 per cent of the tort claims. It must be remembered that just because 90 per cent to 95 per cent of the claims will be removed, a similar percentage of dollars will not be eliminated. In fact, if 95 per cent of all tort claims are eliminated, over 50 per cent of the bodily injury claim dollars will remain. If only 90 per cent of the tort claims are removed, about 60 per cent of the bodily injury claim dollars will remain in the system.

Next, accident benefits: We support the proposed enhancement of accident benefits. By establishing the \$450 weekly level, which is based on 80 per cent, it will compensate wage earners up to \$29,000 per year. This should

accommodate 70 per cent of all wage earners in Ontario. The remainder who earn a higher income will be able to purchase additional coverage from their auto insurer or other accident and sickness insurance should they so desire.

It should be remembered that accident benefits are received tax-free and that is why the benefits are stated at 80 per cent of the insured person's gross weekly income. This is representative of the normal take-home pay of an injured person in this wage category.

The accident benefits are payable weekly from the time of accident and the injured person is not made to wait for years to recover lost income.

Offsetting of collateral benefits is a welcome change and long overdue. In the current system a person could receive 100 per cent of his gross weekly wage in tort and also recover weekly benefits from an employer income continuation plan. In Justice Coulter Osborne's report, it was stated that 30 per cent of all persons injured in auto accidents were receiving collateral benefits. Those persons receiving collateral benefits were receiving, on average, 136 per cent of their weekly wage. There certainly is less incentive to return to work and can only lead to malingering when a person receives more than his weekly wage. There is no fairness to a system that allows an injured person to recover more than a 100 per cent of his wage.

Contrary to what some have been saying, the deduction of the sick leave plan would occur only when the injured person has actually received those benefits. Should the injured person not avail himself of the sick leave plan, then there would be no deduction.

The accident benefit coverage is drafted in favour of the consumer, with which we agree. In the event of a dispute, generally the benefit will be paid to the injured person and the dispute sorted out later. The introduction of an alternative dispute resolution mechanism through the insurance commission will assist in this regard. Any disputes that arise can be quickly resolved with the use of mediation through the commission's office.

The payment priority is premised on a first-party basis. In almost all cases, the injured person will be dealing with his or her own insurer and that in itself will provide more efficient service. The benefit will be that there is an added incentive for an insurer to take care of its own customers. Those insurers who do not respond and do not pay the benefits in a timely manner will be required to pay interest on the overdue amounts.

The introduction of long-term care and the sizeable increase in the medical rehabilitation coverage should provide substantial benefits for those injured in automobile accidents.

Now dealing with property damage: Currently, 60 per cent of all loss dollars paid out relate to property damage claims. We have long advocated the change to a direct compensation cover for property damage. With the use of a fault application chart, the vehicle damage can be assessed, repaired and finalized in quick order. The removal of subrogation in most cases and the availability of the insured person dealing only with his or her own insurer will speed up property damage settlements.

The proposed change to the property damage section of Bill 68 will now include not only damage to the automobile but also contents and loss of use.

Tort reform: The proposed changes, while welcome, are not sufficient to rectify the rate inadequacy. There are really only two changes that will provide any relief and these are minimal. The first change is that of prejudgement interest for nonpecuniary damages, set at 2.5 per cent. The second change is for the court to have discretion to order a structured settlement where a request is made for gross-up for tax. These changes in no way come close to making up the rate inadequacy of 35 per cent to 40 per cent.

Last, law enforcement: While this is not directly relating to Bill 68, we support the proposals for increased law enforcement. Speeding and drinking drivers have long been a major contributor to accident frequency and ultimate dollar costs. The educational campaigns towards seatbelt use are most welcome and should reduce injuries on our highways. A move to enhance driver licence testing and a move to a graduated driver licensing system has proven effective in other jurisdictions.

We certainly support the use of daylight running lights. In fact, our company published a brochure, distributed in 1984, entitled *Daylighters Live Longer*. A copy of that is attached to your brochure at the rear.

From a claims point of view, our company will certainly respond and deliver this new product to the consumers in Ontario.

Mr Waugh: I thank you on behalf of myself and my colleagues for hearing us. The Dominion is a strong Canadian-owned company committed to serving the consumer throughout Ontario. I assure you that whatever insurance product the government mandates we are ready and willing

to provide, so long as we can expect to be reasonably compensated.

The Chair: We have up to three and half or four minutes each.

Mr Kormos: Bless you. I am going to talk real fast because Mr Philip here wants to ask you some questions, too.

I am really concerned because the Premier (Mr Peterson) back in 1987 promised a very specific plan to reduce auto insurance premiums. In your opinion, is this the plan that he had in mind when he made that promise back in 1987?

Mr Waugh: I have no idea.

Mr Kormos: I bet.

Mr Elston, who has not appeared in this committee once, other than the first day when he came here to crap all over John Bates, the chairman of People to Reduce Impaired Driving Everywhere, and to crap all over Ralph Nader, who expressed concern about the welfare of consumers here in Ontario—

1030

Mr Elston, who has not been here once, none the less indicates in the press today that this chimerical eight per cent is but that. We are not talking about eight per cent; we are talking about drivers who are going to be looking at 40 per cent or 50 per cent, and I know—

Mr Waugh: What is the question?

Mr Kormos: Jaguar, Mercedes, BMW, Cadillac, Lincoln, Olds 98, Olds 88—

Mr Waugh: What is the question?

Mr Kormos: Is Murray Elston correct that this is going to mean increases to some drivers of 40 per cent or 50 per cent, never mind the eight per cent promise?

Mr Waugh: It will be a very small number who will receive, perhaps, increases of that nature.

Mr Kormos: How long have you known that?

Mr Christie: We filed rates with the Ontario Automobile Insurance Board as requested, and part of our filing indicated roughly what percentage of insureds will be getting increases. In that filing we indicated that 3.1 per cent of our insureds outside the Toronto and Hamilton area will be getting an increase of more than eight per cent. That is 3.1 per cent. In the Toronto area, we indicated that six per cent of our insureds will be getting an increase of more than 15 per cent.

In looking at the specific sells involved, in virtually every case it was a large, expensive vehicle, and the reason for the increase is directly attributable to the direct compensation approach

of Bill 68, which requires insurers to pay on a first-party basis for the vehicle. That is, if you insure a Jaguar you are going to be paying to replace that Jaguar, whereas if you insure a Volkswagen you will be paying considerably less. In fact, we indicated that in Toronto 21 per cent of our insureds would be getting a decrease of at least eight per cent because of this plan.

Mr Kormos: I am just glad that none of these cars are fibreglass that Mr Elston talked about.

Mr Philip: At the risk of having my insurance cancelled, I have a question. The basic theme is that as a result of reducing dramatically the tort system you are going to save the consumer money and those savings will be passed on to the consumer. It is interesting that consumers' associations and so forth that have appeared do not agree with that, but my question to you is: If that is the case, why is it—

Mr Waugh: Is the consumers' association not on record as supporting no-fault?

Mr Philip: Public no-fault.

Mr Waugh: But no-fault.

Mr Kormos: Public.

Mr Philip: Public no-fault.

Mr Waugh: We are talking about—

Mr Philip: With respect, if you are going to ask me questions then my time is going to run out and I will not have a chance to ask you questions.

Mr Waugh: I do not mind correcting you, though, that they support no-fault.

Mr Philip: I do not think you have corrected me, with respect, sir. The Consumers' Association of Canada is on record as favouring public no-fault insurance. That is not what Bill 68 does.

Mr Waugh: It is a matter of opinion.

Mr Philip: My question to you is this: Why should we believe you when you say that this will reduce costs to consumers when Ralph Nader and others who have examined the American private no-fault system claim that any savings that may have resulted from reducing the tort system were not passed on to the consumer but were gobbled up by the insurance companies themselves?

Mr Waugh: I am not saying Ralph Nader is incorrect, but I would like to see the background for that statement that he made. I do not agree with that at all, but I do not think that you should just accept Ralph Nader coming here and making a statement before you and accept that unsubstantiated as the gospel. I do not believe you should do that. I would like to see how he substantiates that statement.

Mr Philip: Sir, with respect, 30 years of experience as the leading consumer advocate heading the largest consumer group in the world with extensive research suggests—

Mr J. B. Nixon: Which supports no-fault.

Mr Philip: —that he did have evidence.

The Chair: Mr Runciman for three minutes.

Mr Philip: He did not support no-fault.

Mr J. B. Nixon: The consumer group that backs him supports no-fault.

The Chair: Order.

Mr Runciman: I hope that does not cut into my time.

The Chair: That does not cut into your time, Mr Runciman.

Mr Runciman: This gentleman was criticizing Mr Nader. I am just wondering, gentlemen, if you would be prepared to express an opinion this morning on the government's failure to release the 23 actuarial studies that have been done in respect to the no-fault bill that is before us and the implications of it. We are having a lot of statements made by government representatives with respect to the cost efficiencies, etc., and I am wondering if you would join with us in asking the government to make that information available to this committee in the Legislature.

The Chair: Before you answer, the parliamentary assistant has a point of clarification and/or information.

Mr Ferraro: I indicated, members of the committee, to the chairman prior to the meeting today, and I assume the chairman is going to pick a better spot in the day, that indeed it is the intention of the government to ask for, hopefully on 6 February, some committee time to indeed release that information. Staff will be available to provide a review for the committee. So on 6 February, which is the first day we are back in Toronto, Mr Runciman, hopefully all that information will be yours to consume.

Mr Runciman: That is good news. I guess you do not have to answer that, then.

The Chair: I will not take that out of your time, either.

Mr Runciman: I would like to know about your own profit-loss experience for the past two or three years. Could you indicate to me in the auto area what it has been?

Mr Waugh: Yes. We have it in our brief.

Mr Runciman: In specific dollars?

Mr Waugh: Yes. The loss in 1988 was \$8 million, and that is after we attribute all

investment income, including investment income on shareholders' equity.

Mr Runciman: How have your other lines done?

Mr Waugh: I cannot recall offhand, but on balance we had a small profit.

Mr Runciman: So you do not—we have heard this testimony before in this committee—use auto as a loss leader to draw in business to other lines.

Mr Christie: It is difficult to use Ontario automobile as a loss leader for our home owner policyholders in British Columbia or Newfoundland. They are not particularly interested in supporting the drivers of Ontario.

Mr Runciman: How many years have you been losing money in auto?

Mr Christie: We have lost money only for 1988 and 1989. We have had years before where we lost money—1973-74 in particular—but even in 1987 our return, as I stated in my brief, was six per cent. After tax return that is hardly a reasonable return for our shareholders. They could have made a better return than that without being in the business at all.

Mr Runciman: Based on the projections we saw in the *Globe and Mail* that the industry is turning around in the current climate, and with tort reform, although you have indicated it is perhaps not as far as you would like to see it go or we would like to see it go, and also with the tax and OHIP breaks the implications of the government's initiatives in respect to highway safety—if you factor those in, have you taken a look at what your experience would be for 1990?

Mr Christie: Yes we have, and it is part of our filing with the OAIB. We indicated that after all of those changes were reflected—the removal of OHIP, change in premium tax, the impact of Bill 68 in removing claims from tort—we still felt that we would require an increase in our premium levels of 12 to 13 per cent, and in fact that the combination of eight per cent in Toronto and zero per cent in the rest of the province will yield us about two and a half per cent, so we are still short but we are prepared at this point to live with that as a short-term measure.

Mr Runciman: You filed that information with the insurance board, did you?

Mr Christie: Yes, we did.

Mr Runciman: So that it is available to the public for, perhaps, freedom of information.

Mr Christie: It is filed with the board.

Mr McClelland: On both page 12 and page 17 reference was made to the option that will be

available for consumers to purchase additional layering in terms of income replacement. I have asked other presenters, most notably brokers, from time to time and I can understand why they have not been able to provide that kind of information. Can you give us some idea with respect to the estimated cost in, say, \$10,000 increments? So I am thinking in terms of moving, say, from the \$29,000-\$30,000 threshold to, say, \$40,000 or \$50,000.

Mr Christie: I have done a preliminary review of that. I based it on \$150 per week, each \$150 increment, if you do the multiplication to save time. At that point we estimated that for each \$150 per week of benefit purchased the price would be about \$30.

1040

Mr McClelland: Per year?

Mr Christie: Per year.

Mr Sola: That was one of the questions that I was going to ask.

The Chair: Okay, then, Ms Oddie Munro.

Mr Sola: I have got another one. On page 6 you mentioned that eliminating, in many cases, the difficulty of proving no-fault would be the result of Bill 68, and on page 13 you say determination of fault through a fault chart. How much difficulty have you had with that fault chart in Quebec and in these other jurisdictions? Was there a lot of litigation at first, that the chart was inaccurate or so, because that is one of the questions we have been hearing before this committee and—

Mr McCubbin: We have had absolutely no difficulty with the fault chart. The chart has been in place in Quebec since 1978 and it has worked very well. We have something similar, called an intercompany settlement chart here in Ontario and I would say it probably is accurate for 99.9 per cent of the cases. There is the odd case where the chart is not applicable because it is a bird's eye view looking at two cars at the point of impact. Most companies—ourselves included, if looking at that case and the very odd exception does not fit the chart—will go outside of the chart to provide reimbursement; number one for the insurance deductible or proportion thereof, and also advise the underwriters not to surcharge them for the claim.

So there is very little difficulty with that.

Mr Waugh: I think there is an appeal process, too?

Mr McCubbin: Yes.

Mr Waugh: On the chart, there is an appeal process if the customer does not like what the chart says. They have a right of appeal.

Mr Sola: Okay, there have been allegations made that it would be simpler for the companies to really assess a 50-50 fault to each accident rather than go through this procedure. How often does that happen?

Mr McCubbin: Well, it happens according to what the chart—if you look at it—says, is 75-25, or 100-0. That is the way it works out. There are cases, of course, in which there is blame shared out of a 50-50 basis but, as I say, it is a bird's eye view looking down at the accident. You have to remember that the insured is not governed by it for his deductible. He does not have to accept that if he does not want to. He has recourse to try and rectify that. Most companies will work around it, because you are only talking about his portion of the deductible; also, are you going to surcharge him or not, as far as the claim is concerned.

The Chair: Thank you very much for your presentation. Just as a point of clarification to the committee members, the parliamentary assistant did bring to my attention the request from the ministry staff to appear before the committee on Tuesday. The only reason I did not mention it at the beginning of the proceedings is that there was limited attendance by the committee members and I had every intention, as soon as we had full attendance, to bring that to the committee's attention.

From the Canadian Auto Workers, Mr Sinclair. Sir, the next half hour of the committee time is yours. Just identify yourself for Hansard and please proceed. The clerk has—or is in the process of distributing copies of your brief.

CANADIAN AUTO WORKERS LOCAL 222

Mr Sinclair: Thank you. I am John Sinclair, president of Local 222 in Oshawa, representing about 20,000 members.

The Canadian Auto Workers union is extremely concerned over the government's no-fault auto legislation and the serious implications it will have on our workers and other working men and women across the province. We have been following the development of the legislation with interest and increased concern. We cannot understand why the Peterson government wants to invoke a plan that will adversely affect every man, woman and child in Ontario by imposing severe hardship upon innocent accident victims.

As workers, we are afraid of losing our right to fair and individualized compensation, as well as

protection of true income loss. The substantial reduction in compensation to innocent victims is a very real concern to our workers. It will have a real and a negative effect on benefit packages. Under the legislation, workers will not receive full replacement of their lost income if they are disabled in an accident. They will recoup only 80 per cent of their wages up to \$450 a week. Anyone making over \$23,400 a year will not be fully compensated for their loss. This maximum level of compensation is well below the poverty level for a family of four in Ontario.

In order to fully protect themselves our workers will be forced to purchase additional disability coverage. This new and hidden cost is both unfair and unjust.

We are also concerned by the fact that many workers will have to deduct any and all sick leave credits before receiving any benefits under the no-fault system. These credits, built up over the course of one's employment, will be ripped away from the innocent victims while the insurance companies benefit to the tune of hundreds of millions of dollars. The result will be a total erosion of existing sickness and accident plans into which employees have contributed over the years.

We are also concerned about the viability and credibility of the Workers' Compensation Board. Recently the minister responsible for this legislation, the Hon Murray Elston, publicly admitted that the board will suffer under the proposed no-fault system. The implementation of a threshold will remove an innocent victim's right to individualized compensation unless the injury meets the requirements of death or permanent serious and continuous physical injury. This amendment will affect workers' compensation by eliminating the right to choose between collecting workers' compensation benefits and taking legal action. Under this system the insurance companies will not be obligated to pay benefits if the worker is entitled to workers' compensation. The no-fault plan will also transfer a portion of the overall cost burden of auto accidents from private insurance companies to the workers' compensation system. The cost of this burden was recently estimated at \$25 million annually in a confidential Workers' Compensation Board memorandum.

In short, Bill 68 will punish rather than protect the members of our union who, through no fault of their own, become innocent victims of motor vehicle accidents and are tossed to the mercy of the insurance companies. Our workers will receive less in the way of benefits and protection;

they will lose the protection of their sick-leave and disability programs; they will pay more in the way of premium increases and taxes to offset the \$140 million handed back to the insurance companies, in addition to the increased burden on the Workers' Compensation Board, OHIP and other health and worker production programs. They will be compelled to live under a system which the government's own advisors have opposed in both the Osborne and Kruger reports.

On behalf of our membership, I urge you and your colleagues to reconsider this unfair and unjust legislation. Bill 68 will impose real and significant hardship on working men and women throughout Ontario. While we support the principle of auto insurance reform, we cannot support the proposed program which creates more and greater problems than it purports to correct. I would be pleased to discuss this matter with you at your earliest convenience.

I will add on page 4, the committee has received submissions from a number of organizations regarding the manner in which this legislation will hurt working men and women in this province. It has heard from groups representing teachers, police, innocent accident victims and organized labour. These groups have addressed such issues as the threshold, the level of benefits, and the impact on negotiated disability and sick-leave plans.

Economic arguments against this legislation are numerous and have been laid out before you during the course of these hearings, but there is another way in which this legislation will severely alter the life of every man, woman and child in Ontario. This aspect has received little attention thus far, but it is an area that deserves to be addressed. It is our view that, in addition to carrying enormous economic cost, Bill 68 carries enormous moral cost as well. This legislation alters the way in which we as citizens deal with one another and the expectations we have of one another in the community.

Under the current system, or even under the amended version of Bill 68, Ontarians know that they are effectively covered by insurance in their day-to-day relationships. If I hit my neighbour's child with a car, both the child's family and I know that the situation is covered. There will be compensation for the victim and a sanction imposed upon me as a driver. These factors provide what you might call a moral insurance coverage for the fact that I still have to live beside my neighbour after the accident. This moral aspect is very much a part of the social fabric that enables communities to function. Bill 68 threat-

ens to end the moral coverage and to place new and significant strains on the social fabric of Ontario's society. Under this legislation, and depending on the exact nature of the injury sustained, that same neighbour's child I hit with a car will have a greatly reduced access to compensation for losses sustained. This in turn will cast a dark shadow over the relationship between me and my neighbours. The understanding, shared assumptions and other aspects of the social fabric will all be placed at risk. These factors will result in the loss of moral insurance coverage governing the relationship not only between me and my neighbour, but between all Ontarians as well.

1050

I urge you to consider this moral cost when evaluating this legislation. I urge the government members on the committee not to turn their backs on the tradition of their own party in this regard. The Liberal Party has long prided itself on concern for and care of the rights of the disadvantaged in our society. In our view, however, Bill 68 will increase, rather than reduce, the challenges faced by the disadvantaged. This legislation places all Ontarians at a moral, as well as an economic, disadvantage. By reducing access to economic assistance on the part of the innocent victims of motor vehicle accidents, Bill 68 will also reduce the moral protection governing our own lives and dealings with our neighbours. For this reason, I urge the committee in general and the government members in particular to reconsider this legislation, not only on economic grounds, but on moral grounds as well. Thank you very much.

The Chair: Thank you.

Mr Ferraro: Mr Sinclair, on the first page you make a statement that people will recoup only 80 per cent of their wages to \$450 a week and that anyone making over \$23,400 a year will not be fully compensated for their loss. We would disagree with that, sir, from the standpoint that if you qualified for the \$450 it would be net of any deductions and that, indeed, it would be pretty close to around \$29,000. And mindful of the fact that the average industrial wage in Ontario is around \$28,000 and the average wage in Ontario is around \$25,600, indeed it would be substantively higher.

Mr Kormos: I am going to start, Mr Chairman. Mr Sinclair, thanks for coming. You should know that you, along with other trade unionists, other representatives of professionals and working people, rehabilitation experts,

victims and indeed members of the legal profession and members of the community, express real concerns. Indeed, in Thunder Bay yesterday the community and people living in that area indicated clearly that this legislation was bad legislation, they wanted no part of it. Two days earlier in Sudbury, working people, health professionals, health care people and victims of motor vehicle accidents indicated clearly that they wanted no part of this legislation, that it was bad legislation, that it was designed only to increase profits for the insurance industry at the expense of the—do it on the broken backs and legs and fractured skulls of innocent accident victims.

As well, you should know that the government has been trying to peddle this piece of insurance industry profit insurance—that is really what this bill should probably be called—by talking about eight per cent premium hikes. Murray Elston, the minister, was here the first day that these hearings opened. He has not shown up since. He tried to peddle this piece of garbage with promises of eight per cent, yet yesterday revealed to members of the press that we are talking about 40 to 50 per cent hikes for some people. I appreciate that he is talking about Jaguars and BMWs and Mercedes-Benzes, taking a little leaf from my book but, I tell you, that scares the daylight out of me because it will trickle down, trust me. This is one of those occasions where trickle-down is going to take place because when Elston starts talking about the Jaguars and the Mercedes-Benzes, pretty soon he is going to start talking about the Oldsmobile 98s, the Oldsmobile 88s and the mere Deltas and the sort of cars that your people make and most people in North America and in Canada and in Ontario drive.

I am concerned about the fact that the minister and the cabinet have got secret documents that show how much extra profit this is going to make for the insurance industry and how it is going to be arrived at by gouging drivers and workers and victims in Ontario. And they will not make those documents public.

I am concerned about the fact that the parliamentary assistant up in Sudbury, when Mr Runciman asked him, "Look, is anything going to change the government's position on the threshold part of this; the denial of the right to compensation for innocent injured victims?" Mr Ferraro very candidly—and I admire his candour in that regard—said, "No."

Indeed, Murray Elston, in the press, says he hopes to have the necessary legislation passed

shortly after the Legislature convenes 19 March. Co-operators Insurance is already distributing these little forms that say Ontario has changed to so-called no-fault auto insurance—it makes it important to have your policy. They are already sending out the material. I mean, it is in the bag. The fix is in. The cards are marked. There is not a single thing that is going to happen to change these guys' minds short of massive public opinion that I tell you is out there; people across Ontario saying, "The government is so deep in the back pockets of the insurance industry, we've got to save ourselves; save ourselves from the pure-profit interests of the insurance industry even at the expense of this government."

I tell you, the message that we have got to give to these guys is if they dare let this legislation go through they will not see a government again in Queen's Park.

The Chair: Before Mr Philip continues for three minutes—you may have been out of the room. The parliamentary assistant announced that we will try to have a briefing when we are back in Toronto on 6 February, scheduled from 8:30 to 10, in which the documents that people keep referring to as, quote, "secret" will be released.

Mr Sterling: Why do they not just give them to us?

The Chair: I am giving you information.

Mr Kormos: What do you mean "quote, secret"? Let's see them. Let's have them. Put them on the table.

Mr Sterling: Let's have them now.

The Chair: I am giving you information that the parliamentary assistant to the Minister of Financial Institutions will be here at 8:30 on 6 February to release and brief us on those documents.

Mr Kormos: After the fact. Some democratic process.

Mr Philip: If they are not editing the documents, I do not see why they cannot give them to us now. My question to you is this, I have been on both sides of the bargaining table and my experience tells me that a large part of collective bargaining deals with the matter of obtaining proper benefits in terms of sick leave, disability programs and so forth. Would you agree that this, legislatively, removes benefits that have been collectively and democratically bargained for by workers in this province and literally then removes from the pockets of people who have sick leave and benefit packages millions of

dollars and transfers them to the insurance companies?

Mr Sinclair: Yes, I agree. What you are saying there, the question of the money; the first part of it has got to be the negotiated benefit. Most of the factories that we have negotiated it. There are sick benefits there that have to be exhausted before the \$450 kicks in. But the thing that is very dear to everybody out there as a moral issue is the question where individuals or your neighbours and you are playing ball in the backyard, and for some reason you miss it; it hits your neighbour and he happens to get knocked over the chair or, say, a table or picnic table or whatever and breaks his leg; there is coverage there for him. Even now, even with this, there is coverage for him. But if that same individual is backing out of his laneway with his van to go to work and the neighbour was walking behind and for some reason the vehicle backed into him and ran over him and broke his leg, and say he was crippled and left in a wheelchair or had to get around on crutches, there is not anything there for that person. There is nothing there. You cannot sue; nothing. So what do you do? You have been neighbours for 20 years. That is the moral part of it that is really bad. If something like that happens, then either the neighbour is going to move or you are going to move, because you would feel guilty, and that is terrible.

Mr Philip: Thank you. I had further supplementaries, but I may want some questions raised in the House of Commons some time, so I am going to defer to my colleague from Oshawa.

1100

Mr Breaugh: I just have one quick question. People who belong to this local have a good wage. They have a benefit package that I think a lot of people would admire, part of which is some legal assistance. What would this kind of law do to that part of the benefit package?

Mr Sinclair: Well, first of all, referring to our members in General Motors, they would have to draw out all their sick benefits for a year, then they would go on to the extended disability and they would exhaust that. That is governed by your years of service in the plant. Then, I guess if you are still out there, you could still look at \$450 if you had some place to live.

Mr Breaugh: One final one. How would you explain to your members that, despite the benefit package they now have and the potential to protect themselves that they have in the contract now, they will have to set aside some of that and get along on \$450 as being their sole source of

income? The parliamentary assistant seemed to feel that that was a rather generous amount of money and that people should be extremely grateful that the government has moved to a plan that would give them this kind of cash. How would you go about trying to explain that to one to your membership?

Mr Sinclair: Well, it is very difficult, because right now with the way the economy is, what is happening and the number of layoffs we had, \$450 is not going to take care of an innocent person involved in an accident who has paid insurance for 20 years. That is nothing but a disgrace.

The Chair: We have Mr J. B. Nixon, Ms Oddie Munro for up for up to seven minutes. Mr J. B. Nixon.

Mr Breagh: He is being briefed by the parliamentary assistant.

Mr J. B. Nixon: Mr Sterling forewent his opportunity, I take it.

The Chair: I did not have him on my list.

Mr J. B. Nixon: I am sorry. Thanks for appearing, Mr Sinclair. I appreciate your coming. One suggestion that has been made throughout these hearings is that, for those who are making in excess of \$29,000 a year, roughly, when they buy insurance they will be made aware that the basic package they are buying gives them wage-loss protection up to about \$29,000. The suggestion will be made to buy some excess income coverage.

Mr Kormos: You cannot buy it; it is not available.

Mr J. B. Nixon: We have not had any firm pricing on that, but we have had some evidence that it would be in the order of \$10 per \$10,000 of wage protection. So the \$450 a week net is not an absolute limit. It is not like people making more than the average wage in the province of Ontario will be left with an insurance gap. What do you say to that?

Mr Sinclair: I have heard about the extra, but nothing presented or turned out other than the \$450. Regardless of what it is, I think that when the innocent victim who has paid car insurance for protection for years, and we all do that, happens to be involved in an accident, it is not his fault and his livelihood is in jeopardy, is taken away from him, to me that is a disgrace and that is the first I have heard about being able to buy extra insurance for \$10 for every \$10,000. But this is something that is very dear to a lot of people, and I cannot stress enough that when you take somebody's livelihood away—through no fault of

that person's; the person is in a car accident—who has paid for insurance for 20, 25 years, and then say, "Well, okay, you have got \$450 coming," to me, that is a farce.

Mr J. B. Nixon: Well, one of the concerns, as I understand it, on this issue, and one of the reasons why the wage loss was set at slightly above the average wage for an Ontario worker, is that if you gave unlimited wage-loss protection, essentially you would have low-income workers subsidizing high-income workers who would claim more for their wage loss than the majority who are at the lower end of the scale.

Mr Sinclair: Just on that, you talk about initiative to start up a business, never mind the worker in the plant. He starts up a small business and runs it. That individual falls in that category. As I said, he pays insurance all along; he gets in an accident; he cannot continue with his business; he has to close it up. Do you think \$450 is fair?

Mr J. B. Nixon: We have heard a lot of representations along those lines that not only are losing income, but that are losing their investment and their business.

Ms Oddie Munro: When you look at the economic aspects on the no-fault side, I think the reasoning was that the timeliness with which the benefits were paid to every person insured, including those driving in the car, would result in those people as far as possible being restored to either their normal functions or their normal occupations.

I guess it was our feeling that, indeed, many people could not return to their former occupations because of the delays. I am wondering if you would care to comment just on that aspect from your point of view.

Mr Sinclair: Of people not being able to return? Like, if they are in an accident, not being able to return to their employment?

Ms Oddie Munro: There seems to be some indication that a lot of people, under the current scheme, did not have access in as fast a way as they should have to a whole variety of rehabilitation services, and under this bill they will.

Mr Sinclair: I have to disagree with that. Take the Big Three here; I will just speak for General Motors. If a person has an accident or something or is involved, he immediately starts receiving benefits. Now under this proposal, those benefits all have to be exhausted, and then if he is still out there and cannot find a job, the \$450 click in. To me that is a disgrace.

The Chair: Thank you very much for your presentation. We appreciate it.

From the Chedoke-McMaster Hospitals, the neurotrauma branch. The clerk is distributing copies of your presentation. If you could identify yourselves for the benefit of Hansard and the television audience, the next half hour of committee time is yours. If you could leave some time for questions, comments and discussion, we would appreciate it. Please proceed.

1110

CHEDOKE-McMASTER HOSPITALS

Mr Basbaum: Good morning. I am Mel Basbaum. On my left is Dr Alan Finlayson and on my right, Dr Karen Shue. We have submitted a curriculum vitae for each one of us to the chair so that we will not take up a lot of time with some of the background.

I would like to make one clarification before we start. While we are here with the knowledge of the Chedoke-McMaster Hospitals, the content at this time is the responsibility of the three of us.

We thank the committee for this opportunity to appear. We have reviewed portions of the amendments to the Insurance Act known as the Ontario motorist protection plan and wish to express our concern that the act, as proposed, fails to adequately protect the motorists of Ontario.

The test established to determine threshold is far too severe and restrictive. By insisting that injuries be both permanent and serious and have a demonstrated physical base, the act fails to recognize the unique nature of brain injury that can produce major changes in the lives of individuals, yet not be as obvious to physical examination as the loss of a limb or disfigurement.

Clause 231a(1)(b) and clause 231a(3)(b) of the act fail to recognize psychological, mental or emotional injuries and appear to deny the right to damages for people who receive injuries of this kind as a result of trauma. In our opinion this is a major omission of the legislation. We frequently encounter individuals who are seriously disabled in their activities of daily living as a result of mental, psychological and emotional injury caused by trauma.

In many instances, a traumatic head injury does not give rise to a physical lesion which can be readily identified by present medical techniques. Such injury does, however, result in disabling psychological mental and/or emotional damage.

In regard to the terminology, as knowledgeable professionals we are frequently asked to provide informed opinions regarding the diagnosis of degree of impairment, formulate and carry out treatment programs and describe the prognosis for long-term recovery. It is likely that under the proposed no-fault legislation we would be similarly asked to provide information relevant to the threshold test. Unfortunately, the language used to define this threshold is ambiguous, inconsistent with current medical terminology and overly exclusionary.

Specific concerns include the following. "Permanent": How long must a disorder or injury be present to be defined as permanent? This becomes an issue when "natural recovery" does not necessarily mean "full recovery." For example, an individual with an acquired brain injury may sustain significant physical, intellectual and behavioural impairment. It would be unrealistic, with our present knowledge base, to predict how much recovery in which capacities any particular person may experience. Hence, the definition of "permanent" in such a case seems to depend on the person's ability to function adequately over the long term;

"Serious": Similarly, the seriousness of an injury is defined by its impact on the functioning of the individual. This means that both "permanent" and "serious" are redundant with, or confounded by, the following clause regarding "impairment";

"Impairment of an important bodily function": The difficulty with this phrase is that it is inconsistent with existing medical terminology. "Impairment" has been defined by the World Health Organization as "any loss or abnormality of psychological, physiological or anatomical structure or function." Thus the threshold, as defined, does not include an assessment of the objective or subjective importance of the injury.

These aspects are better defined by reference to "disability" and "handicap." "Disability" addresses the importance of an injury from the perspective of the degree to which an impairment restricts or prevents an individual from performing activities "in the manner or within the range considered normal for a human being" in his own sociocultural framework.

"Handicap" further extends the idea of importance of an impairment or a disability by referring to the limitation or prevention of the fulfilment of a role normal for the individual. Thus, both terms are more suitable than referring to "impairment";

"Continuing injury": This is ambiguous. This presumably refers to continuous disabilities, but

even the meaning of "continuous" is unclear. Does it mean "every moment" or is it redundant with "permanent"?

Finally, limiting the test to difficulties which are "physical in nature" is unrealistically exclusionary. Many of the most disabling sequelae following trauma are cognitive or emotional in nature—for example, cognitive and emotional sequelae of brain injuries. Measurement tools exist to document the reality of these factors. In addition, these types of deficits—physical, psychological or mental injury—are acknowledged in the sections on rehabilitation and long-term care benefits as requiring significant amounts of treatment.

In summary, we would recommend the elimination of "permanent," "serious" and "continuing" criteria, replacing them with reference to disabling or handicapping conditions resulting from physical, cognitive and/or emotional impairments as recognized by the WHO. These impairments should be described or identified by the relevant appropriately trained professionals, for example, by a physiatrist, neuropsychologist, psychiatrist, clinical psychologist or rehabilitation social worker.

No-fault benefits: Part II, subsection 7(5) of the no-fault benefits schedule provides that an insurer may pay certain disputed no-fault expenses pending resolution of the dispute. Clause 7(c) relieves the insurer of his obligation to pay necessary rehabilitation, life skills training, occupational counselling and training pending a resolution of dispute over payments of this sort are necessary.

This, too, is a serious omission in the no-fault legislation. Prompt and effective rehabilitation, life skills training and occupational counselling and training are often essential elements in returning an injured person to his pre-accident activities of daily living. Delay in funding of this rehabilitation will result in delayed treatment and delayed, or even nonrecovery.

Weekly indemnity: While we agree that injured parties should not gain income by virtue of an accident, by the same token they should not be forced to lose. The requirement that claimants use all other benefits before the no-fault weekly indemnity and that there be dollar-for-dollar reduction of the insured's eligibility for the \$450 per week forces individuals to use up benefits, such as sick leave, which may be required at a later time. As proposed in this legislation, citizens would be forced to pay for dual insurance but could only collect on one.

First claims should be against the no-fault insurance and claimants should be able to combine insurance benefits up to the maximum of their usual earned income. The government should also consider its reasons for recommending a maximum nonindexed benefit below the 1989 poverty line for the city of Toronto. Even the insurance industry, in its brief to earlier commissions, recommended replacement income of up to \$600 per week.

The inclusion of a benefit for full-time homemakers is certainly an improvement over the existing plan. The maximum benefit of \$185 will, however, in many cases, be only a token of the true cost of replacing the function of a full-time homemaker and parent. We strongly encourage the government to review and increase this benefit so that it reflects more closely the true cost of functions such as day care, baby-sitting, homemaking, additional travel costs, etc. The emotional distress of a loved one being injured and possibly hospitalized is very significant and only worsened if complicated by unexpected financial crises.

The proposed benefit seems to allow no compensation for lost wages by children under 16 years of age. In our current culture many, if not most, adolescents are employed in some type of work and one need only visit a fast-food outlet to obtain the evidence. These children, particularly those with long-term disabilities, who may incur additional expenses for such things as transportation made more difficult because of an inability to use public transit, are equally entitled to their losses.

Eligibility: Eligibility for benefits should not be delayed because of an insurer's refusal to pay. Expensive rehabilitation benefits will, with few exceptions, ultimately need to be funded by some outside source. If this is not the insurer, it will likely be the government, through the Ministry of Community and Social Services, regional social services or other government-funded programs.

The present system of funding rehabilitation needs often leads to extended hospitalizations at a high cost to the taxpayer, not to mention the delays in service to others. While this is a much more general problem involving more than just victims of motor vehicle accidents, adoption of a system of automatic eligibility based upon the recommendations of qualified rehabilitation professionals would be a step in the right direction.

If the government insists on including the private sector in its plans, it should at least assume responsibility both for the payment of benefits to injured parties until the review

process is complete, and for the recovery of its expenditures from the insurer or claimant, as appropriate.

Long-term benefits: It is well known that in many cases, the maximum benefit of \$1,500 per month will not nearly cover the costs incurred by the insured party. The costs most often will be transferred to the province, through placement in long-term care facilities or the use of other government-funded programs. While there is an obvious economic burden to the taxpayer, far more important is the potential destructiveness to the injured party's quality of life.

At the same time, the lack of adequate long-term benefits will result in inappropriate use of hospital bed days. It is our recommendation that long-term benefits be based upon the structuring of a sum, up to the maximum total benefit, with appropriate indexing. This will require some form of board to determine the extent of eligibility. One possibility would be a tribunal comprised of local representatives of the Ministry of Community and Social Services, the insurance industry and an appropriately qualified rehabilitation professional. Hearings should be in the local community and within a prescribed time from the original request.

Finally, while \$500,000 seems like a great deal of money, it buys precious little rehabilitation over the life span of the injured clients whom we serve.

Impaired drivers: The new legislation refuses benefits to those who are impaired while at the wheel. Not only does this deny a basic tenet of no-fault insurance but also transfers the responsibility for services for impaired drivers to the province by virtue of their access to social assistance, vocational rehabilitation services and, if necessary, the cost of a long-term care facility.

1120

If the government's intention is to prevent impaired driving, it should by now be clear that this is one of the least effective means. Consider the number of persons who still drive uninsured vehicles despite a mandatory insurance law or those who continue to drive while their licence is under suspension.

Subrogation: It appears that the responsibility for the costs of rehabilitation will be transferred to the health care system. At the present time there is a crisis in health care funding of patients with head injury, as it is acknowledged by both the Ministry of Health and the Ministry of Community and Social Services that current resources are inadequate. Rather than further

burdening an already encumbered system, we would recommend that the health care costs continue to be reimbursed to OHIP and that further subrogation be established to support the rehabilitation service necessary for the victims of motor vehicle accidents.

I would like to just present very briefly typical case examples. The first is a patient who is a quadriplegic who owns his own home. The home is not wheelchair accessible, nor is the patient able to function without appropriate attendant care. Although, barring any delays, rehabilitation benefits may retrofit the home, \$1,500 per month will not cover the necessary attendant care costs. Waiting lists for chronic care or an attendant care apartment program are at least one year, if one takes an optimistic attitude. Provision of enough funds to cover an attendant would result in discharge from a costly special rehabilitation bed at least a year earlier, and perhaps eliminate the need for litigation proceedings, which could never be settled this quickly within the present justice system.

The second example would be a brain-injured patient with severe cognitive disorders who is physically capable of returning home. His parents are more than willing to have him home. The patient, however, requires continuing life skills and cognitive retraining and assistance with resocialization and behavioural management. It is anticipated this will require approximately 20 hours per week for a period of two years, at a cost of \$20 per hour in the first year. Without this, it will be impossible for the parents to provide appropriate supports because of work and other family commitments. The patient will remain in rehabilitation hospital pending appropriate residential placement in a transitional living centre, which may also not exist close to the patient's home community.

We urge you to reconsider this proposed legislation. We do not want our client group to be further handicapped. Thank you.

The Chair: Thank you. I have a point of clarification from the parliamentary assistant.

Mr Ferraro: Thank you. I apologize to the committee. To the delegation, at the bottom of page 3, in the last sentence you say, "The proposed amendment seems to allow no compensation for lost wages by children under 16 years of age." I realize you have qualified that statement. By way of clarification, if a child under the age of 16—and admittedly, there are only a certain number in that age group—has a job of any sort, part-time or other, assuming a child of 14 is making \$20 a week, let's say,

hypothetically, the child would qualify for, at the very least, \$185 in compensation. Admittedly, once you get the younger child there is no income, by and large.

Mr Basbaum: The way the legislation is worded, that is unclear and that is why I used the word "seems."

Mr Ferraro: I think the regulations are a little clearer.

Mr Philip: It certainly does not compensate him for a year off his life, which in some other way means a year off his education and a year off his salary, or for the pain and suffering.

I guess any of us who has experienced and worked with people who have had brain damage, from whatever cause, be it stroke or accident, are quite cognizant of the state of the art, if you want, or of the science that you describe in your first page.

My question to you is this: By putting in the threshold, which you object to, in this bill, are you likely to end up in more litigation, in your being called more often as witnesses into a court system to prove that the person is permanently disabled, than you were before? If so, does this not negate the argument the Peterson government is making; namely, that we are going to have less court costs?

Mr Basbaum: Would Dr Finlayson respond to that?

Dr Finlayson: I think a yes to your question would be appropriate. I can see no reduction in my own work in that regard with the proposed definition of threshold. I am sure I will be asked as often to describe whether or not this person is suitable for the threshold as I am to document what injuries they do have for whatever compensation is currently available.

Mr Philip: You have talked about the problem of home care, and this government gives lip service to keeping people who are disabled in some way at home, even though, compared to governments like Quebec, it does not seem to back it up with the financing of any decent salaries for home care workers. But my question to you is this: In your opinion, recognizing that there are differences in different communities across the province with wage levels being different, what would an adequate home care support system cost, on average? I recognize that some people may require four hours, some people two hours, but just from your own experience?

Mr Basbaum: I do not know if I can give you a general answer because of the differences, but

in terms of hourly wages, what I can perhaps use by way of example is that in a particular project that I am involved in which uses attendant care, and this is established by the Ministry of Community and Social Services, the average wages are now running in the whereabouts of \$10 an hour.

What you have to do is compare that to somebody in a rehabilitation bed that is running between \$800 and \$1,000 a day, or if it is not at home and if resources were available in terms of an attendant care apartment, where your per diem would run somewhere between \$60 and \$65 a day.

Mr Philip: Many of the people who are in active treatment beds at the Etobicoke General Hospital, where I am on the board of governors, are waiting for chronic care facilities, not uncommonly for two years, not one year, which you mentioned in your report.

Mr Basbaum: In Hamilton it is five.

Mr Philip: Okay, so it is even worse down there. In your opinion, will the inadequacy of the home care provisions in this legislation result in more taxing of our already overtaxed active treatment beds in Ontario hospitals and more people being institutionalized, eventually, in chronic care and extended care facilities?

Mr Basbaum: I think that is the implication in what we are saying. Without appropriate long-term benefits, it means a bottleneck on acute and rehabilitation beds because of the waiting list, when we are talking four to five years for a chronic care bed in Hamilton. I was being very optimistic when we talked about a year in the presentation.

Mr Philip: At considerable cost to the taxpayer, I might add.

You talk about injured parties. You agree that injured parties should not gain income by virtue of an accident, and I guess all of us would agree with that, but we are painted this picture by the insurance companies and by the Liberals of people somehow growing fat out there. I guess maybe they have been watching too many American TV programs in which some people have obtained what can only be called very, very lucrative settlements as a result of the unfortunate incident to a member of their family.

I ask you, from your experience of working with injured parties, injured persons, do you know of anybody who has really got a great settlement that will meet their needs out of the present insurance company system? Is anybody

getting rich by having an accident or by having a member of his family have an accident—

Interjection: Dismembered.

Mr Philip: —or dismemberment in some way to themselves?

Mr Basbaum: The question I would ask is, it worth getting rich for that type of disability, whether physical or otherwise? As you imply, I think the implication is that people are malingers, that they are out to get the system. Our own evidence—it is not to say that those people are not there, but they really are few and far between, and to punish the many for the few I think would be just totally inappropriate.

1130

Mr J. B. Nixon: Thank you for appearing today. I appreciate a lot of the testimony you have given. I want to talk with you specifically about the threshold. You make some recommendations for change in the threshold. Specifically, you emphasize that we should be using the word "disability." My specific question is, does disability, in your mind, imply permanency?

Dr Shue: I think part of the point we were trying to make was that permanency itself is hard to predict, that that disability may handicap an individual for a long period of time but it is next to impossible to predict for how long, possibly for ever but maybe not to the same degree for ever; there may be some recovery but we cannot predict a full recovery. I guess it is part of the word "permanency" that brings the difficulty.

Mr J. B. Nixon: I understand.

One of the problems we are dealing with is that there are allegations made that under the present system those who have relatively minor injuries are overcompensated and those with the catastrophic or serious injuries are undercompensated in terms of provision for all their needs. The argument is made that those who exceed the threshold generally would be those who face catastrophic injuries and are undercompensated in the present system, so they would have the tort suit but they would also have the no-fault benefits, whereas those who do not exceed the threshold would be those who are presently overcompensated and most need rehabilitation to be made whole again and return to their life activity.

But I appreciate your making the point about predictability of permanency: How do you do it?

Dr Shue: I think the other thing that you have just addressed is seriousness and that that seriousness is only really reflected when discussing disability and handicap. If I lose my finger, it

may not be that serious. If I were a concert pianist, I would be very much handicapped. It all becomes an issue of what that person's life has been and will now be following the injury.

Mr J. B. Nixon: You subsequently talk about eligibility, and I realize you were dealing with an earlier draft regulation, but you should know that the draft regulation now does not require that rehabilitation or long-term care expenses be incurred before there is payment. That is no longer a requirement. We are trying to eliminate the obstacles to speedy payment and that is one of the eliminations that we think will help that.

Dr Finlayson: If I could address your comment about some mild injuries being overcompensated, I would like to reply and limit my comments to cases of head injury.

Mr J. B. Nixon: I do not regard those as minor.

Dr Finlayson: One of the problems with head injuries is that there are many so-called minor head injuries that go undercompensated because we insist on using antiquated medical procedures for the definition, and there are clearly a number of those cases where, with more refined technology, we can demonstrate physical changes.

Mr J. B. Nixon: I am very aware of that and appreciate your making the comment.

Ms Oddie Munro: Actually, that was my question. It is my understanding that when you take a look at observable, measurable data, either physiological or relating to physical injury, you are fairly confident in either the mental health field or the psychological field that you will have data which are not subject to abuse. If that is the case, then it should become fairly obvious when a person has more than a fair chance of going through the threshold.

In the regulations we certainly mention psychological treatment and rehab treatment, but could you tell me—and you were already mentioning it—to what extent can you get a physical reading of behaviours and compare that with what you think, or the data that you had before on someone injured in an accident, that would be recognized by a variety of health care professionals and from which a good case could be made that that was serious? In my experience, I have got to think that we have come that far.

Dr Finlayson: Speaking as a psychologist, the province of Ontario invested several thousand dollars in educating me at a graduate and undergraduate level in order to learn just how to do that sort of thing.

One of the problems with the act as I saw it, and proposed, was that it would allow chiropractors, for example, to make statements about mental health but not psychologists. I think that is the kind of issue that needs to be addressed. There are objective measurements of behaviour, psychological functioning and, in particular, behavioural measurements of brain function that are quite sensitive and are quite substantiated in both the clinical and the experimental research literature.

Mrs LeBourdais: I just have a brief question, but I would like to convey my thanks for the detail that you have gone into in your brief. I think that will help all of us in our deliberations, particularly on the wording of the threshold.

Specifically with respect to the word "permanent," almost any operation obviously leaves a scar. Do you in the health profession see that remaining scar as something that you would use to define permanent when in fact the person may be functioning fully again? I realize that if the scar is on one's face and one earns one's income through films or modelling or whatever, that might be different, but I am just wondering, how do you see a scar as relating to the term "permanent"? Or do you look at the fact that the person is back functioning, that the fact that there is a scar is—

Dr Shue: There may be some other viewpoints. I would tend to think of that scar again in relationship to disability or handicap. In terms of career, it would be one aspect of a person's disability, but there may be other aspects as well, and that is where, again, there is difficulty with wording in terms of "physical." That scar may leave a very great psychological and emotional scar as well, and that may be something that really needs to be considered in addition to just the physical. Are there scars? Yes, the scar is permanent, but if somebody can get through that, maybe that disability relating to the physical scar will not be permanent. In many cases, it may be. It may impair their relationships with other people; it may impair their sexual relationships; there may be many more factors than just the physical.

Dr Finlayson: For example, one could go as far as to say that for some young men a scar might be a badge of courage and therefore the scar has enhanced their psychological function, whereas for somebody else, a minor scar may be seen as a major invasion of body integrity and that person could have major psychological consequences as a result of the same scar.

Mr Basbaum: I was just going to say, though, I think the terms "disability" and "handicapped" are defined by the World Health Organization. I think that is the basis of the recommendation of looking at those terminologies rather than the ones that have been used, because they do have an internationally accepted definition and they look at that scar in terms of its meaning for the individual rather than as a surgical incision.

The Chair: Thank you very much for your presentation. It was very helpful.

From Osgoode Hall Law School, we have Professor Glasbeek. A copy of your submission has been circulated to the committee. We have half an hour. If you could leave some time for some comments, questions and discussions, we would appreciate that. Please proceed.

1140

DR H. J. GLASBEEK

Dr Glasbeek: I thank you for the opportunity to come and discuss Bill 68 with you. This is my first exercise of this kind. I was motivated to do it because, I am sad to say, I find Bill 68 an unacceptable document in every way. The logic of the scheme is completely questionable, the empirical evidence which surrounds the notions in the scheme are unfounded and I think it denies principles, basically, I suppose, of democratic accountability. So maybe you should not have asked me.

I will not read my submission. It is very short. For those of you who suffer from insomnia, you may be able to read it at night or while you watch a replay of this hearing. I will just speak to it as briefly as I can. As an academic, I am used to speaking in 50-minute blocks so half an hour is a tremendous strain.

What you have heard mainly, I believe, with respect to Bill 68 are internal criticisms of it. I was listening to some of the presentations a few minutes ago, and they are all about the infelicities in the bill itself, whether there are contradictions, whether the policy objectives of this bill can be achieved. And that is, of course, exactly what you would expect in a committee hearing of this kind. Incidentally, it is like shooting fish in a barrel to criticize this bill. It is so easy, it is almost ludicrous. It would not be a serious exercise for a first-year law student. There is another way of looking at the bill, and that is to see whether its policy objectives are even worth attempting. That is what I would like to ask you to consider.

I have tried to understand the criticisms of the bill, which are relatively easy to make on an

internal basis, and you find my views on some of the criticisms which are well known in appendix A of my submission. I have listed them as some meritorious criticisms and some unmeritorious criticisms, and I will leave you to consider them at your leisure.

To look at the bill externally, does it make sense at all, does it seek to attain anything worthwhile? I think you have to see what it contains. It contains two components: fault and no-fault. Those two components can only exist and achieve their aims if they are not contradictory. If they are contradictory, necessarily neither set of objectives will be achieved. That is a fairly simple building notion.

Now, what do I mean by that? Fault and no-fault are apparently compatible because they both seek to compensate victims. In that sense, of course, there is no juxtaposition, there is no contradiction. But compensation is all no-fault seeks to do. It seeks to do no more. Fault, however, seeks to do much else. It seeks to appease a victim; it seeks to wreak revenge on the victim's behalf; it seeks to specifically deter a wrongdoer and to generally deter all of us from wrongful behaviour. It has many objectives.

Now, it follows that if those objectives are not compatible with compensation, you cannot have a scheme which seeks to achieve those objectives and compensation. I remind you that most of the criticisms you are hearing, and presumably constructive criticisms you are hearing, are about how to make the bill work better as a compensation scheme. But it has other elements which necessarily detract from it. That is, I think, the fundamental problem.

What I would like to put before you is, what is it about fault that makes compensation always unachievable? You have got to remember that is why you are here. We have had a fault scheme ever since you can remember. You have a crisis because we have had to seek compensation through a fault scheme. That is why you have a crisis. Why retain it? It is a real question and I will address that as I go along.

In order for a fault scheme to work, a victim must, in order to recover any compensation, show that he was injured as a result of someone else's nonadherence to a reasonable standard of conduct. There has to be a causal relationship and an unreasonableness finding. By definition, this presents a whole series of problems for compensating a victim.

First of all, there is a question of proof. It is immensely difficult to show that a person caused another person harm as a result of unreasonable

behaviour. That is how lawyers have got rich. That is why we wear suits like this. That is how we do it. It is very difficult.

Take, for instance, a non-motor-vehicle accident case. Dermatitis is the one I have got in my submission, but you can take any case, it makes no difference which case it is. I have got dermatitis because I think of a product made by some manufacturer. I have got to find the manufacturer, I have got to show the product was related to my dermatitis and then I have got to show the manufacturer was careless. How the devil does an ordinary Canadian do any of that?

Sometimes we help them procedurally, sometimes we cannot. Two results must follow and do follow. First, we need lawyers; they cost money, a lot of money. Second, a lot of people will not recover anything—nothing. There is evidence of that, abundant evidence. The Ontario Law Reform Commission in 1973, in its report on motor vehicle accidents, reported that 56 per cent of all people injured in accidents do not recover anything from a fault system. Nothing, not one penny. This was repeated as a finding by the report, *Protecting the Worker from Disability*, compiled by Professor Weiler for the Ontario government in 1983.

The Minister of Financial Institutions, Mr Elston, is reported as saying that one third of all motor vehicle accident victims—where it is easiest to prove fault, by the way—do not recover anything from the fault system. Notice this first of all, that inasmuch as the fault system exists, it is difficult to make work for a victim in terms of compensation. All right, that is the first point that you have to pay attention to: it is hard to make work.

The second point that you get automatically out of any fault system: Because it has multi-objectives, compensation on the one hand and deterrents—specific, general—retribution and appeasement on the other, we seek to prevent, we seek to deter by paying compensation. The wrongdoer must pay compensation; hence he will be educated; therefore we will all be educated. That is the way it works.

Notice, a lot of people do not get compensated, a lot of people do not get educated. By definition, stupid. But it is worse than that, it is really much worse than that. For instance, you cannot make it work because our notion of responsibility, on which it is based, is based on proper responsibility where you just do not shoot somebody who is at fault. We try to make them pay for it in an appropriate manner; that is, the

extent of the fault should be punished. Obviously compensation will not measure fault.

Imagine if you should be unlucky enough as you leave this building to roll through a stop—some of you have done that from time to time—and hit a young lawyer, full of capacity, ready to be a litigation lawyer under Bill 68, going to make millions out of you, and he is disabled so that he can never do that again, by some unfortunate circumstance. The amount recovered will be millions of dollars, the fault absolutely slight—no correlation. The temptation will be to find you not at fault because the amount is so great, in which case of course there will be no compensation from the system. The two cannot mix. It is complete fortuity.

Imagine that this would happen to you, to me. I get roaring drunk, I get into my car, I drive in reverse in a one-way street, unlicensed, crazy, and I drive over an 87-year-old lady. What does the fault system say? "Oh, that's minor, almost no compensation." No correlation whatsoever.

The retention of the fault system is absurd because neither does it compensate properly—I have already given you some figures—nor does it address the fault issue properly. It cannot, by definition. That is why you are always in crisis.

Second, in that part of the problem we cannot even measure the damages, we cannot even get the compensation right, what we want to compensate. Why can we not? What is 15 years of lost income worth? How do you calculate that? You have to make a guess, right? How much would they earn? How many times would the person be on strike? How many times would he be sick? What would the tax rates be? What would the inflation rates be? What would be the sense of promotion, the sense of shifting, somebody dying in the family, requiring home care, remarriage, no marriage? Any number of things happen to human beings which affect the amount of compensation they need. There is no way of calculating it.

Am I alone in saying that? No, not at all. Arguments that have come before you say, "We can calculate full compensation." The Supreme Court of Canada has said, "This is nonsense." The Supreme Court of Canada has said continuously, "This is crude guesswork of the crudest kind," which of course affects the fault aspect, because the wrongdoer is supposedly paying too much or too little to compensate the person getting too much or too little. What kind of a scheme is that? Why would anyone want to retain that? It is worse than that. If these were the only problems.

1150

What about when it comes intangibles—and you have heard all about that—pain and suffering, loss of enjoyment of life and loss of expectancy of life? These are terrible things. Who can deny that? When we are putting money value on that—and you have heard all about that, "We should have more of that." We should have none of that is the answer, because we do not know how to do it.

The Supreme Court of Canada says: "There's got to be a limit. This is crazy." We all know that, right? Because we do not know how to do it. When it comes to loss of life expectancy, we have said, "What is life worth, a lost year, a lost day, a lost minute?" The Alberta Court of Appeal has actually said: "Look, this is absolutely silly, valuing the invaluable. It cannot be defended or done logically." There is no mystery about this. It cannot be done. We deny compensation, we calculate it badly and we have no affect on fault. So far so bad, and it gets worse.

Notice that when lawyers argue before you—particularly lawyers, I believe—that we really should compensate fully, they are denying totally the fault aspect; that is, the deterrence aspect, the amount of tailoring of punishment. They are saying: "We can do it, give the person full compensation. That is what fault is for." But if you give full compensation, you might be overpunishing the wrongdoer, or not enough, depending on how much compensation you give. They do not seem to care about fault all of a sudden; they care only about compensation, but for compensation all you need is no-fault. It is a very strange argument they are offering. What they are offering is that the amounts seem logical, which is quite a different argument, not an argument of principle at all. Let me come to the amounts.

To use a well-worn phrase in today's Canadian politics, imagine that you hit an ordinary Canadian and you disable that person for two years, he loses income for two years, and so you have to pay for two years, two years of income and medical expenses, rehabilitation and out-of-pocket expenses and so on. I have not even mentioned pain and suffering and loss of enjoyment of life and so on. There are lots of things you have to pay for; \$100,000 is an absolute minimum if you are serious about compensating a person.

Which ordinary Canadian has got \$100,000 capital to pay that amount? No one. What follows? We say, "You must have insurance." We make it compulsory in this free and voluntary

society. We make it compulsory so that everybody will be able to pay the shot, but what does that mean? It means that the individual is not bearing anything like the cost of his fault. By definition, the compensation of fault has become even more unhinged. The only cost is now the potential of the premium increasing and nothing else. There is, again, no link whatsoever, by definition.

Notice again the ugliness that appears in the argument, and it is ugly, is it not? People come before you and say, "Fault is a system of individual responsibility. That is why we have got to retain it," individual responsibility for which no self-respecting lawyer would sue anyone who is not extremely wealthy or insured for the particular risk which has materialized. Insurance companies offer insurance policies on the basis that they will minimize your risk; that is, the protagonists of the very fault system emphasize minimization of individual responsibility while they proclaim it as a virtue. There is something wrong with that.

Incidentally, just as a digression for which I have no time, many of these fault proponents argue that if you do not have fault, people will drive on the wrong side of the road in increasing numbers. That is such palpable nonsense that you should not even address it. I personally—but of course I am a wimp, the George Bush of northern Ontario—drive on the right side of the road not because my insurance premium will go up but because I am scared of getting killed. I drive on the right-hand side of the road not because my insurance premium will go up but because I think the police will grab me. I drive on the right-hand side of the road not because my insurance premium will go up but because I actually do not like hurting other people, being a wimp. Way down the list somewhere or another, I might think about my insurance premium.

Mr Philip: The same reason I do not call insurance companies sleazebags.

Mr Kormos: Well, I'm game.

Dr Glasbeek: So we have a whole series of arguments which show that fault in itself has no relationship to compensation and it cannot compensate properly. Why can it not compensate properly? I have not mentioned that; I have talked about the difficulty of calculation, the difficulty of recovery. Insurance companies, which we now know must be in such a scheme—in our context private insurance companies—operate for profit. Indeed, that is part of your crisis: they claim they are not making enough. They must operate for profit.

What would they do when you come before them with a claim? They temporize. They say, "Well, it's not really as serious as you say it is." They say, "Well, it's really your own fault." Blame the victim. Or, "You're particularly susceptible to certain kinds of harm," and so on. As they do that, time passes by. If you have any kind of serious injury and time passes by and you have got only a minor amount of income coming in from some kind of collateral benefit or from some kind of primitive no-fault scheme, what do you do? You are under tremendous pressure to accept a deal, you are just under tremendous pressure, and that is what happens. On the other hand, if you have got a minor injury, the insurers count you as just an administrative nuisance to an insurance company operating for profit.

What happens? The results are in. These are not to be questioned. Every report that Ontario governments have ever commissioned has found exactly the same thing, every one. Remember, 56 per cent of people get nothing. But of those who recover, for 88 per cent of people with minor injuries, they recover the full loss or more. Of the people who have serious injuries, as defined by the insurance companies, 71 per cent—watch the figure—nearly three quarters, receive less than a quarter of their losses. The Ontario Law Reform Commission report and the Weiler report give you those figures, less than a quarter. So although the sums are absolutely large—and that is what you hear in all the fault debate, lots of compensation—they are relatively small. What is large, of course, is the compensation for the lawyers in all those cases, but not for the victims. Many victims believe mistakenly, on this evidence before you now, that the scheme actually works to their advantage because the numbers are large. It is a perception which is a distortion.

What does Bill 68 do about that? Something very strange. It ensures that people who are minorly compensated will no longer get over-compensated, with the miserly amount it allows under the no-fault. It makes sure of that. But on the other hand, people who are slightly more seriously injured but not threshold seriously injured, will certainly be undercompensated, not overcompensated or partially compensated but very seriously undercompensated. People who are threshold hurt will be even more seriously undercompensated than ever before. This you might call a fail-fail system.

What have we got so far? If you have a fault system, you cannot prevent and you cannot deter and you cannot appease and you cannot revenge in the way that you are supposed to, precisely

because of the difficulties of proof, of making the individual responsible and so on, as I put before you. You cannot compensate adequately or justly, either in terms of amounts or in terms of making sure that everybody gets something. You cannot do either of those things, and you cannot compensate justly in terms of making the individual who is the wrongdoer pay the right amount. That follows.

What has Bill 68 done? It has retained all of those mistakes and then added to them by making the no-fault part—that is, the easy part, compensating those people who are hurt immediately—as miserly as possible, which of course is the result of the cost of continuing to carry this fault system. It is a cost.

1200

The question I asked myself when I saw all this—it is very obvious, and I think it is very obvious to everyone in this room—I asked myself why did they do this? These are decent people facing a crisis trying to solve a problem. Why did they do this? Then I think you want to ask yourself some questions: Why was Bill 68 chosen? Of all the reports, independent reports, that the Ontario governments over recent years have had, for two decades now, only the Ontario Select Committee on Company Law in its second report on the insurance industry in 1978 recommended something like Bill 68. Every other one said it was absolute rubbish.

The most recent Osborne commission, of which you are well aware, of course, said that no-fault should be enriched and fault retained; not an argument I would make; but said no threshold system. It said it precisely because of the problems you have heard about, the criticism of a threshold system. But they wanted to enrich the no-fault benefits because, if enough people are satisfied with the compensation, which you can do by no-fault, there will be relatively few people suing; relatively few people putting a cost on insurance and the public.

The Chair: Can I just interrupt at this point in time to say that I have got about 8 to 10 minutes left within our half hour.

Dr Glasbeek: I will finish now, sir.

The Chair: Okay. Then I have got some speakers, Mr Kormos, Mr Nixon, Ms Oddie Munro.

Dr Glasbeek: May I just make one last point?

The Chair: Please.

Dr Glasbeek: The Ontario Law Reform Commission report of 1973, to which I referred, said it should be a no-fault system only, do away

with fault. The Slater commission said the same thing. Weiler said the same thing and the Thomson report, Transitions, recommended a comprehensive disability no-fault scheme. Why then is Bill 68 here? Is it to impede all those reports' recommendations? This cannot be true.

The question that I want you to think about—and then I will stop, sir—is who does support Bill 68? Who has come out and said, “We support it”? And of those people who oppose Bill 68 on the basis that it is not sufficiently full of fault, whose and what interests are they furthering? And of the independent commissions who reported either fault, no threshold or no-fault, what interests were they furthering? Once you ask yourself those questions, I think you can see Bill 68 has no legitimacy—as an undemocratic instrument, as an illogical instrument and as a nonempirically based instrument. Thank you, sir.

Mr Kormos: You seem to be endorsing a—well, the Liberal government in Quebec has a public auto insurance system; Conservatives in Saskatchewan and Manitoba, and Social Credit in British Columbia. Do you have any opinions as to why this government will not consider public delivery of any system and, more importantly, perhaps, public delivery of a real no-fault system?

Dr Glasbeek: It is a tempting question to tackle, but I am not a politician, sir, as you know. I have only got the most crude guesses as to why governments do not want to do the most obvious things. We know no-fault can deliver adequate compensation. We have one model in our world which operates quite well. The New Zealand system operates without flaws. The most recent authoritative report, the law commissions review, gave it sort of a ringing endorsement as to how well it was working.

So why do we not do it? I think there are a number of factors. I think one is ideology and it is ideology of a very structural and deep kind. First, it is ideology, of course, of—for want of a better expression I shall call—free enterprise, that we must have some kind of private means of looking after people rather than public means. That is something that seems to be wanted by the mass of the population and, if so, it should have currency.

The other is, of course, the ideology which law has built. That is the ideology of the individual, that individuals should be made responsible, that individuals should have their day in court, that individuals should decide what is proper and improper behaviour. What you have in the fault

system, just to illustrate that—I am saying it very crudely—but what you have in the fault system is a system of vigilantism. Instead of trying decently to deter bad behaviour on the roads or anywhere else in our fault system, we ask individuals who are hurt—who are the weakest persons in our community—to go out and do the job for us; to go out and show that there are people at fault. It is an extraordinary notion to me that we continue with that idea. We do not do it in other schemes. For instance, we do not do it in the health scheme; we do not do it in other things. For some reason this is still attractive to us. I do not know why. I wish I did.

Mr Kormos: The government and its spokespeople persist in calling this a no-fault system. They persist in calling Bill 68 a no-fault system. I suspect that their marketing people have seized on the fact that many people like that title and identify it with some more progressive systems across the country, identify it with BC, perhaps even with Quebec. Is Bill 68 a no-fault system?

Dr Glasbeek: Absolutely not. It is a fault system with a very minor no-fault component. The reason that the no-fault part of it works so poorly; that is, \$450 a week, which is less than workers' compensation, which is not to be indexed, which is poorly funded, is precisely because dollars have to be saved for the fault scheme.

Another aspect of it—I will say this quickly—that may have been amended in the regulations—I know people are regulating as we are sitting here. For instance, insurance companies are still to make the decision as to which people ought to be experience-rated in a particular way or not, privately, in a system of "no fault." It is an extraordinary aspect of it reflecting fault-based notions of the scheme.

Mr Kormos: A final question: the Liberals and their spokespeople argue that the tort system is no good for the vast majority of injured people but they would similarly, then—they talk about it being unfair but then they would reserve it for the most seriously injured, those with the most significant injuries, those with such an overwhelming degree of impact of an accident. How can that be justified?

Dr Glasbeek: As you heard—I think you want me to repeat it for the record—I certainly do not want to see it justified. I think part of it is, assuming integrity and sincerity of people who are proposing such a scheme, which I do; I think the proposal rests on the fact that people do believe that large amounts of compensation can somehow express our concern for the badly

injured. Of course, you do get large amounts in absolute terms for people seriously injured under the fault system, large amounts which you may not get under a no-fault scheme which is more utilitarian, more widespread, more socialized in cost. So that is an attraction, that you are doing your real best for the most seriously hurt. The down side, of course, is that many of them will have to wait a long time, will be poorly looked after, will always be undercompensated.

Mr J. B. Nixon: I will not ask you to comment on some of the principles that have been advocated by the party on the other side of the table—

Mr Kormos: Why not?

Mr Philip: At least we have some principles.

Mr J. B. Nixon: —but I would ask about some of the complexity of establishing what is just compensation. You have made the point that under Bill 68 no one is adequately compensated. Sooner or later someone is going to have to make a decision, whether it is a public or private system, whether it is a fault or no-fault, as to what adequate compensation is. Is there a principle you can suggest on which that decision would be made?

Dr Glasbeek: Yes, I think there are guidelines that we can use. First, let me say what an appropriate question it is. No matter what scheme we have, we will always have the difficulty of trying to make a judgement as to how much we want to compensate, what is proper to compensate and how much we are willing to pay for it. Those difficulties do not go away no matter what scheme we have.

Having said that, we do have guidelines. You can look after people's medical needs without any difficulty and that, of course, is easier in Ontario than it is in many other jurisdictions which battle with these kinds of difficulties. You can look after their lost income. You have two ways of doing that and that depends on how much you want to put into the scheme. You can look after the actual loss of income, or on some notion of average loss of income, and let people insure themselves differently for extra risk. Those are choices you would have to make politically. But you could have, therefore, full income loss replacement or partial income loss based on some medium, average-based notion of what people need, want, desire.

1210

You could, of course, under such a scheme and you would, I think, under such a scheme, always include in the compensation package full

rehabilitation and return to the workforce possibility. That would be part of the cost of such a scheme. You would cut out of such a scheme, I believe—although it is very hard to do politically, and I recognize that—you would cut out of such a scheme trying to measure the intangibles: pain and suffering, loss of enjoyment, loss of expectancy of life. If there are any credits in the way of the New Zealand scheme, which has done all these things I have mentioned, they have kept a little bit of that. It is the only part of the scheme which works with difficulty; it is the only part of the scheme which leads to review demands and to investigation demands. And it is costly.

There is a very simple—if I prick myself with this little pin, which I have torn to bits in my anxiety here; as I do that I would be in tremendous pain because I am a wimp. On the other hand, there are some people around this room, if you hit them over the head with a sledgehammer who would say, “I apologize for putting my head in the way. There is no way of measuring that kind of thing in any sensible way. I would prefer we did not do it. So that is the way you would go; I do not think it presents any simple solution, but it takes out of context the particular difficulty of the individual having to prove anything other than income loss and medical loss, which—you cannot avoid that.

Mr J. B. Nixon: Quickly, for the benefit of the committee, can you elaborate very quickly on how the universal no-fault system in New Zealand deals with deterrence, deals with those other aspects of accidents?

Dr Glasbeek: Yes. I can only speak of that from the report; I have not studied it separately, but what they have done is what we do. They keep on educating their people in safety as best they can, they enforce the law as best they can, and do that. As far as I know there has been no outcry for appeasement. There have been no injured victims yelling out, “I am taking a tomahawk to the person who drove over me,” providing they are all being covered. That has not been a problem, whether or not accident rates have gone up—sometimes they do, sometimes they do not. That is, they may not be doing a great job of enforcing their laws and regulations and standards. For instance, I think you had material before you that was suggested to you about Quebec, since they have had no-fault their accident rate is going up. It is very misleading. We have had fault and our accident rate has gone up. There are many other variables. The most important ones are education of people generally, in the workplace, on the roads, anywhere else,

enforcement of the law that exists and, for instance, in motor vehicles a better transport system would help no end.

Mr J. B. Nixon: That is right. If I can suggest a third variable it is the economy, because when the economy is up accident rates are up; when it is down, the rates are down.

Dr Glasbeek: Yes, sir.

The Chair: Professor Glasbeek, we are out of time. Thank you very much for your presentation.

Dr Glasbeek: I have been glad to be here and I trust you will do the right thing.

The Chair: We will attempt to do so.

Dr Glasbeek: I know you will.

The Chair: From the Hamilton Law Association, Mr Ivey, and I believe there are other gentlemen with him. The clerk has distributed copies of the two presentations. The next half hour of the committee time is yours. Whoever the spokesman is going to be, if you could also identify the gentlemen with you for the benefit of Hansard and the television audience. Please proceed.

HAMILTON LAW ASSOCIATION

Mr Ivey: On my right is David Smye, and on my left is William Morris, each of whom is a member of the Hamilton Law Association and each of whom will be addressing the committee with me this morning. Also in attendance this morning on behalf of the association is our president, Harrison Arrell. Mr Arrell will not be addressing the committee.

On behalf of our association I do want to initially express our thanks for your invitation to appear today so that we might address this committee on what our association believes to be a most regressive piece of legislation. Our association represents approximately 600 lawyers in the greater Hamilton area. The trustees of our association have met and have unanimously passed a resolution categorically condemning Bill 68. The members of your committee and members of the Legislature generally will know from other matters that our association is not afraid to speak out on matters of concern to the legal community, in respect of matters where we believe the government is heading in the wrong direction and especially when that proposed legislation imperils, as we believe Bill 68 does, those persons whom we spend our professional lives representing.

At the commencement of this hearing, Mr Elston told this committee, in effect, that the only

people who would appear before you and be opposed to Bill 68, were lawyers. Since those opening remarks it is our impression that there has been a concerted effort both by this government and by the insurance lobby to characterize any critic of Bill 68 as either being a lawyer or being the member of some group associated and put forth by lawyers.

Our membership, of whom I have particular knowledge, and lawyers generally, quite frankly, have been insulted by the manner in which Mr Elston and other members of the government have attempted to politicize what we believe to be a most important piece of legislation. We suspect that the real reason for the characterization which, as I say, has been adopted almost uniformly by the insurance industry, has been because Mr Elston knows that we as lawyers understand the legislation. We understand the system as it now exists and we recognize the dramatic and negative effect that Bill 68 will have on the approximately 120,000 citizens of Ontario who are injured each year in motor vehicle accidents.

We have studied Bill 68 and we do understand it. We know and we believe this committee, by now, knows also how unfair and how regressive it would be. Ours is a busy world. It is difficult for most citizens of this province, after either a tiring day at work or looking after their family, to sit back and contemplate the effect of legislation which they do not understand, which they have not read, when probably they do not believe that any one of them will actually become the victim of an automobile accident.

Our association believes, in circumstances such as this, that it is our duty and obligation to the public, to our clients, to speak out, to educate, to warn and to criticize such legislation. We do not back off that responsibility. We welcome it and if that is what is characterized as a vested interest, then so be it.

The tort system, as it now functions in Ontario, has developed over hundreds of years. It has provided a just method of fairly compensating the innocent while punishing wrongdoers in a manner designed to forestall that inappropriate action in the future. That system, in my respectful submission, has worked, whether the individual who has been the wrongdoer is insured or not.

The proposed legislation would abolish those concepts in one blow. The inadequacies of the proposed legislation are endless. In other than catastrophic cases, children, seniors and the unemployed will receive virtually nothing. Per-

sons who are employed will receive nothing other than wage replacement to a maximum of \$450 per week, no matter that their actual financial losses may be substantially greater. To the extent that an individual's ability to recover from serious injury is assisted by his right to obtain compensation, that right will now be lost.

Our association is concerned that this government has given into the insurance lobby, organized as it is, has been, here and elsewhere, to create the impression of a crisis where no crisis exists. The American experience illustrates that threats by insurance companies to pull their business is nothing more than an attempt to stampede legislatures into passing legislation such as Bill 68. If Bill 68 is not passed, you can be assured that the insurance industry will be as profitable and as aggressive in the years to come as it is now.

1220

It is not the intent today of our association to analyse in detail what we believe to be the inherent unfairness of this legislation. Others who have appeared before you have done it and have done it well.

When this government established the Osborne commission, our association prepared a detailed brief and attended before Justice Osborne to make submissions. That very able judge undertook what became a year-long thorough study of the tort compensation system in Ontario. Justice Osborne came to the conclusion that a system such as proposed by Bill 68 would be unacceptable for the citizens of Ontario.

When our association became aware of the content of Bill 68 and of the intent of this government in that regard, it immediately established a committee to address that issue. That committee was headed by two of the most experienced personal injury lawyers in the Hamilton area. On my right, as I have indicated, is David Smye, who has practised in the field of personal injury compensation for approximately 20 years. On my left is William Morris, whose experience in fighting the insurance companies to obtain fair compensation for his clients has exceeded some 30 years.

The remarks which they are about to make to you are supported by the members of our association and, I am sure, will be supported by any of our clients who have ever before been involved in a motor vehicle accident and have attempted to go to their insurance company to obtain fair compensation, be that under what is presently called no-fault or otherwise.

Thank you for permitting me to speak. I would now call on Mr Morris.

Mr Morris: I hope we are not going to lose too many more of the committee before we are finished.

Mr Philip: We are all ears.

Mr Morris: For the past 34 years I have been a proud and loyal member of the Liberal Party of Ontario. I have voted Liberal at each and every election. I have provided campaign funds for candidates over the years and supported every party function possible. I have supported my local candidates at every election. Today, I am disappointed, dismayed and disgusted with the Liberal Party for Bill 68. The government has succumbed to the greed, avarice and blackmail of the auto insurance industry. Regrettably, the government is a puppet whose strings are being pulled by the insurance companies.

What troubles me is that many auto insurance companies are making money. Obviously these corporations are operated in a businesslike fashion. The people of Ontario are being asked to subsidize inefficient and ineffective insurance businesses to the detriment of the rights of the people of Ontario. The auto insurance industry has always had interesting accounting methods calculated to confuse and bamboozle both the public and the government. The Department of National Revenue has seen the light. They have compelled the insurance companies to reduce their excess reserves by one third, which means the insurance companies have either overstated their losses or understated their profits. Some companies are able to manufacture losses, if they so desire.

Hearken to the words of Ralph Nader, the leading consumer advocate in the world. There is no one more knowledgeable in auto insurance than he. Listen well to his words so that our children and grandchildren will not be punished for life by the callous and inhumane features of Bill 68.

Thus far, the only groups that support this legislation in its entirety are the insurance companies and the brokers. Is there not a loud and clear message here? However, you should know that support within the industry is not unanimous. You would be amazed how many employees of insurance companies, insurance adjusters and brokers have spoken to me privately, articulating how unfair they believe this legislation to be. They would love to speak out in opposition. Unfortunately, and regrettably, they are petrified for their livelihood. They have been muzzled; this is reality.

Let me share with you my some 30 years of experience in the field. I do not represent insurance companies. I act only for injured parties, many thousands over the years.

Let me deal with the simple subject of no-fault benefits. To quote from Osborne and Kruger, they articulate the record of the insurance industry for these payments to be "abysmal." That is their word, which is a very strong word. Surely this implies a lack of trust.

Most individuals in this province live from hand to mouth. To be incapacitated from working requires income replacement immediately. With the paltry \$140 of today, people require these funds immediately. The average waiting period in my experience is approximately four to six weeks for those payments to commence. Once instituted, most insurance companies do not wish to continue to make these payments. Hearken well to that. They look for excuses, they will stop them periodically, they will require an injured party to be examined by a medical doctor of their choosing. Many times they will require a second and, yes, a third examination with the same or a different doctor in order to stop these payments. Frequently they will require residents of Hamilton to journey to Toronto to see a particular doctor well known to insurance companies whose express purpose is to curtail payments.

Many insurance companies as well resist payments for proper medical expenses as recommended by the injured party's treating doctors. Many adjusters, regrettably, are ignorant of many of the standard modalities of treatment; for example, a transcutaneous electrical nerve stimulator machine, an Obus Forme and matters of that sort. Many insurance companies even refuse to appoint rehabilitation counsellors when appropriate and required.

Many times, insurance companies will hire private investigators to spy on the injured party at the cost of many thousands of dollars. These surveillances by these private investigators who utilize videotapes, interview neighbours, interview employers, the vast majority of these are useless, notwithstanding their elaborate cost and the emotional damage done to the individuals who are being spied upon. Why does the insurance industry do this? One purpose only: to stop payments and negate claims. Insurance companies are suspicious and, simply put, they do not want to make payments.

The government believes its new board will eradicate these problems. If you believe this, you believe in the tooth fairy. There will be so many

complaints and the backlog will be horrific. It might take an individual six months, a year or two years in order to be heard. This will be worse than the Workers' Compensation Board or the Rent Review Hearings Board. You have no idea as to the machiavellian approach of the insurance industry in dealing with injured parties. I invite each and every one of you to come to my office to determine how insurance companies treat the injured. My office is small; nevertheless, one and one half people devote all their time weekly to gaining no-fault benefits, reinstating no-fault benefits, having rehabilitation counsellors appointed and having medical expenditures authorized. You would think that today the industry would be on its best behaviour, given this new plan.

Let me give you an example, the latest one of many thousands I could give you. A man was injured in an auto accident in December 1988. He did not retain a lawyer. He applied for no-fault benefits. The company stopped payments in March 1989. The injury to his ankle was so severe that he required an ankle fusion. Appropriate medical reports were required by the insurance company. The injured party had to get them himself and deliver them, driving several miles to the insurance company office. Finally, in December, one year after the accident, he went to the insurance adjuster pleading for money so that he could buy his family appropriate Christmas presents. Notwithstanding all the promises by the adjuster, the adjuster still refused to make the payments. He said, "You've given me these reports, but now we need our own forms signed by the doctors." The poor man has to go out again. This time he hires a lawyer, this time finally the payments are brought up to date. This is one of literally thousands, tens of thousands of horror stories that can be given. Why then does the government trust this insurance industry and accept everything it says as gospel?

1230

You might wonder from where some of my clients come. You should know that 40 per cent of my clients retain me because insurance companies delay payments for car damages, delay or cut off no-fault benefits. Simply put, the industry cannot be trusted. The government is trying to legislate morality, and simply put, the insurance industry does not have a conscience. I sincerely wish that none of you is ever injured in an auto accident, nor any of your friends or relatives. Unless you have that hands-on experience you have no conception of the real world. The government accepts whatever is presented

by the insurance industry. Regrettably, and I say this as a lifelong Liberal, the government smears lawyers for no reason whatsoever. The minister ought to be ashamed of himself.

I beseech you to listen to the representations of the individuals and groups which have appeared before you thus far and will continue to do so. It is not too late to abandon this frolic. The people of Ontario deserve a better fate. Thank you, members of the committee. Now I will turn it over to Mr Smye.

Mr Smye: I have a few comments to add to my colleagues'. Listening to more than three weeks of these hearings, this committee has received numerous briefs and submissions, most of them against Bill 68. The only briefs and submissions in favour are those of the insurance industry, not surprisingly with this windfall, and Mr Elston himself. What bothers me is that these hearings are nothing more than a bloody sham, and you know it. This is a scam on the public of Ontario.

There are only a few days left for these committee hearings. Then it is going into clause-by-clause. We all know what that means. At best, you might tinker with a few of these. You have a majority, you Liberals, on this committee. You have a majority and you know you have been sent to do a job.

You, Mr Ferraro, what are you doing on this committee, parliamentary assistant to Mr Elston? What kind of objectivity and justice is that?

Mr Ferraro: I am not on the committee.

The Chair: As a point of information, Mr Ferraro is not a member of the committee.

Mr Smye: Mr Nixon, I have seen him on TV. He is going around selling this bill at every stop. Every time I turn on a TV set his handsome face is there selling it.

And where have you been, Ms Oddie Munro? You have been definitely silent, not listening to your constituents in Hamilton Centre who have been speaking out against this.

I implore you to end this lipservice to democracy. You have been listening to these submissions that have been made. How could you possibly give them what they deserve by moving into clause-by-clause 10 days from now?

Mr Elston, Mr Ferraro, the representatives of the insurance industry in the Insurance Bureau of Canada, its paid lobby group, are now advertising and selling the big lie. The big lie is tell a big one and no one will believe you had the nerve to tell it and maybe it is true, people will think it is true. Do not listen to us, do not listen to lawyers, do not listen to us who have practised day in and day out in the pits with the people. Listen to a few

academics, listen to some politicians if you want to, but listen to the insurance industry. They know what is right for the people of Ontario. This is the big lie, this lie that lawyers earned \$500 million in fees last year. This is an outrageous lie.

Mr Elston is a lawyer, I understand, and he has changed his occupation. In my profession, when I make statements in a court the judge says back them up with evidence or I am in trouble. Apparently he has been going around the province saying, "\$500 million—the big problem is lawyers in this system." Apparently in politics you can say anything without any factual basis, and I can understand why he is more comfortable in being a politician than he is in the legal profession. He is grossly misrepresenting the facts to the province of Ontario, and this committee is being used. Some of you backbenchers, you are just being used on this committee.

Why has this committee not demanded that the minister, who makes these statements, put all these economic studies that the government used—we asked you this two months ago, Mr Ferraro, when you were in Hamilton.

Mr Ferraro: On 6 February.

Mr Kormos: After the hearings are over, after the submissions are finished. That is really big.

Mr Smye: Why have you not demanded that all this information be made public before now? What is the secret? Where is this \$500-million figure coming from? Where are all these studies? We know the studies of Mr Justice Osborne, we have all read those. Where are the rest of these studies? Is this democracy at work? This is just a sham at work. You have not heard from one group of lawyers that has not testified here. What about the government's lawyers, what about the lawyers in the Ministry of the Attorney General? Surely Mr Elston consulted them. Our information is that they did consult them and the lawyers told them that this bill is fraught with problems. Where is their report? Why has this not been brought forward? I implore you to end this sham and demand the production of all these reports and studies before you. Mr Chairman, demand it. The public deserves it. This is the very least it deserves.

I have been practising in this field for 18 years, almost 20 years actually, mostly representing hardworking Hamilton people in your riding, Ms Oddie Munro, who have been victims of car accidents. I see it at first hand. I know the destruction and devastation that is inflicted on people from car accidents, in car accident injuries. It is not merely minor interruptions with

their employment. They lose their jobs, they lose their careers, they lose their wives, they lose their houses, they develop deep, long-lasting emotional problems. I see them in my office every day trying to solve the problems that Mr Morris talked about. I know what I am talking about. People need the tort system. They need the right to go to court. Insurance companies do operate on one line, bottom line. That is true, that is reality.

We are going from one of the best compensation systems—it needs some changes made to it—in North America, it has been said so, it has been the envy of every other jurisdiction in North America—to the worst. I always understood the Liberal Party stood for sticking up for the little guy, Ms Oddie Munro. How could this Liberal government get in bed with the insurance industry in this obscene way?

Mr Kormos: A hundred grand and change, that is how.

Mr Smye: I thought it was \$140,000.

Mr Elston has announced this morning—he is already doing his weasel act. I read in the *Globe and Mail* this morning before I was coming here—I could not believe it—that now a lot of people are going to have up to 30 per cent, 40 per cent increases in rates. They are the bad drivers, whoever the hell they are. The good drivers will only face eight per cent. Do you think the people of Ontario are this stupid? Do you think you can tell us, "You're going to get 10 per cent of a loaf of bread, and we're going to save you money because it's not going to go up to \$1.40, it's only going to go up to \$1.08"? Do you think that we are fooled by that kind of argument?

1240

As Mr Ivey said, there are 120,000 injured accident victims every year, and that number will grow every year after this bill is passed. There will be such an overwhelming resentment for what the Liberal government is about to do that you will get kicked out of office, hopefully. This measly, chintzy right to obtain \$450 a week as some kind of compensation package—I implore you. You members, you backbenchers are being used in this committee process. You are being told by Mr Elston, "Oh, we're having a democratic process, we're going to discuss this bill and go clause by clause and make it a law by 1 April." He is on that agenda. He has said it, every time he has been asked, "This will be law in six weeks." Please, change direction before it is too late; before, as Ralph Nader says, we go down, you go down, in infamy, in shame.

The Chair: Thank you. I have Mr Kormos, Mr Philip, Mrs LeBourdais and Ms Oddie Munro, up to three minutes.

Mr Kormos: Please let me know when I am getting close, because Mr Philip has got to ask these people a question. I have got to tell you. You guys have watched the insurance industry. They are just pretty darned near the only people who are coming in here supporting the legislation. I mean, trade unionists, working people, professional people, health care people, victims across Ontario—we were up in Sudbury and Thunder Bay and they said the very same things, that this Liberal scheme stinks. But the insurance industry—and mind you, some of them are sleazier than others, the insurance people who are coming in here, there are no two ways about it, some coming in here distorting the truth—

The Chair: Mr Kormos.

Mr Kormos: Yes?

The Chair: I would warn you in terms of the vocabulary, please.

Mr Kormos: Thank you.

Some of them are sleazier than others. Some have come in here with some documentation and some facts, some have come in here with outright lies, come in here with distortions, come in here with highly edited versions of Mr Justice Osborne, actually attempting to make it appear that Osborne, and contra to anybody's wildest bit of imagination, would ever endorse what is being presented here as no-fault—farthest thing in the world from it.

But the insurance industry has come in here, cap in hand, expressing its interest in getting involved in a new system that will let it distribute more benefits to more people. I am convinced that some of them have Mother Teresa delusions and believe that the leopard is truly changing its spots. Tell me, gentlemen, is that real? Is Mother Teresa accompanying these people into this committee room?

Mr Morris: In my experience, Mr Kormos, there are some good insurance companies out there that do a fine job, but do not be disillusioned. To use David's words, "This is a scam." I mean, you are being sold a bill of goods.

As I have said to you, come to my office—come to any lawyer's office who practises personal injury work for plaintiffs—and look at what actually goes on. It is the difference between fact and fiction. You are receiving fiction in your representations from the insurance industry. For the facts, come to the people who know about it.

Mr Philip: Mr Smye, I think you make some very good arguments. One of the things that strikes me is that this committee has a very competent research person assigned to us. In any committee that I have ever been on, the information and research by the government was always tabled in advance so that that researcher would have some time and the committee members would have some time to ask questions of the witnesses before an inquiry. This has not been the case. We are going to get it some time after, so we are not going to be able to ask you questions based on the government's information.

I ask you though, from the point of view of a lawyer, in your experience, is it not normal that at least evidence is always tabled before a final decision is made? If we take this as legislation, why were you not consulted, or why do you think other groups were not consulted and presented with the evidence before the legislation was introduced?

Mr Smye: In any committee, any so-called quasi-judicial body that I have ever appeared in front of, what you have said has been the case. I cannot believe what you are telling me, frankly, and it just underscores my submission to this committee that it is nothing more than a sham. It is a scam, "Put on a show for the public."

Mrs LeBourdais: If I may, I am going to direct my questions to Mr Ivey, simply because I prefer to be spoken to and not yelled at.

However, I would like to say for the record that during the past two weeks I feel I have been privileged to meet some very fine individuals, many of whom have been from the legal professions and of different political stripes, many of whom have been from the insurance profession and also of different political stripes. I have been helped through this process by people on both sides. I would like to say, however, I do not feel that I have been used in any way as a backbencher on this panel.

I would like to say also that it has disappointed me that certain individuals from your profession—not all—have used individuals who are in the saddest circumstances, who have prepared their briefs and filled them with information on one side of the issue, people who would clearly have passed the threshold and would have ended up in the exact same circumstances of having to use the tort system that they did have to go through, many of whom perhaps adequately benefited and many of whom did not.

Mr Ivey, earlier in your presentation you said that you felt that the tort system had served

people well. Our previous speaker, Professor Glasbeek of Osgoode Hall Law School, has said, and I am going to quote from his brief, "Of those who suffer serious losses, 71 per cent receive less than one quarter of what they lost...56 per cent of people get nothing from the judicial fault system; seriously injured persons get a pittance of what is owed them, soon impoverishing them."

Many of those judgements would be based on the capabilities of particular lawyers and also the capabilities of various witnesses. I am wondering if you could just comment on that, please.

Mr Philip: He also said this could make it worse.

Mr Ivey: Any person who is injured in a car accident, to use that narrow definition, where the other person is at fault will receive compensation. I do not understand the comment you have read to me that only some percentage of people do.

It may be that some people do not seek compensation and therefore in some way have fit into that equation. Presumably those same people would not seek compensation under any new system.

It may be that insurance company representatives—because a lot of people do not get to lawyers. A lot of people think lawyers are going to cost them a lot of money or have other reasons for not approaching someone. They try to deal with the insurance company themselves. They develop a trusting relationship with that adjuster who comes to their home three or four days after the accident.

The fact is that many people, having had that visit from the insurance company representative, do come to lawyers. You would honestly be astounded to hear what they try to do. People who are seriously injured, who have not returned to work yet, are asked by insurance company representatives to sign releases. The insurance company representative stands in their living room and holds out a cheque to them for \$1,000 or \$500 and says, "This is yours; all you have to do is sign this piece of paper." They try to develop that trusting relationship with them, and some people do that.

One of our concerns is that Bill 68 is saying, "We're going to trust the insurance industry to continue to properly serve those people." They do not do it now. They are in it for the one basic capitalistic reason of making money. I do not object to the capitalistic system, but you cannot ask someone whose job depends on the bottom line, the president of the insurance company, the adjusters in that insurance company, to deal

fairly with people when that means paying them money that will come off their bottom line. It will not work. That part of it will not work.

The other part that does not work is that the compensation you are offering to that person through Bill 68 is minimal. What are you going to say to that person who makes more than \$450 a week? As Mr Morris said to you, most people, if we are all honest, we spend what we make in one way or another. We do not have large savings accounts to fall back on if we lose our job.

These people are going to get, or they are being told by Bill 68: "You're going to get \$450 and nothing more. There is no provision, and you will not—

Mrs LeBourdais: That does cover the bulk of the population.

The Chair: I am going to have to interrupt there. I want to thank you very much for your presentation.

From the Social Planning and Research Council of Hamilton and District, I have Mr Pennock. Your presentation has been distributed to the committee. If you would identify yourselves for the benefit of Hansard and the television audience, the next half-hour is yours.

1250

SOCIAL PLANNING AND RESEARCH COUNCIL OF HAMILTON AND DISTRICT

Mr Welland: My name is Doug Welland. I am a member of the board of directors for the Social Planning and Research Council of Hamilton and District, and of course you have identified Mr Pennock, who is our executive director. We thank you for the opportunity of appearing before you this morning.

As you may know, the SPRC is a community-based organization providing assistance to the voluntary sector agencies and their funders in research, in planning, in organizational development and community development. We also work to identify social needs in the region, promote public awareness of these problems and to foster appropriate community-based responses.

The SPRC is managed by a board of directors with representation from many parts of the Hamilton-Wentworth region in social services, business, labour, politics, the service industries and academia. I fall in the latter category. I am an associate professor of economics at McMaster University, with a specialty in compensation issues.

One of the strengths of the SPRC is our diversity. Our board comprises people from all

walks of life and many different points of view. On this issue of no-fault insurance, as on most issues of significance before the board, the views I will be expressing are not those of all of our members but of a substantial majority.

Our concerns on Bill 68 are four in number.

We believe the disability benefit of \$450 per week is inadequate, providing benefits barely above the poverty line for a family of four in Hamilton-Wentworth. Moreover, we are concerned about the lack of indexation of these benefits, because as time passes, without indexation the family of four will slip further and further below the poverty line.

The potential exclusion of innocent accident victims with closed head injuries, with psychological and psychiatric trauma, serious soft tissue injuries and serious nonpermanent physical injuries from access to full compensation for economic and noneconomic losses via the verbal threshold is, in our view, wholly unacceptable.

Victims are denied access to the courts for recovery of losses, not on the basis of the amount they have lost but on the basis of the type of injury they happen to have suffered. There will inevitably be seriously injured victims on both sides of the threshold with comparable and substantial losses.

Finally, we believe that the government is not adequately conveying the extent of what is being taken away under this legislation.

I want to deal with each of these points in turn, with emphasis on the effects of the legislation on the not-at-fault driver.

According to the National Council of Welfare, the poverty line gross income for a family of four in the Hamilton-Wentworth region was \$23,266 for 1989. It should be noted, of course, that poverty line incomes will increase year by year with inflation.

For an accident victim whose gross income is at the poverty line, the no-fault benefit is more than \$2,000 less than his after-tax employment income would be. A one-income family of four just at the poverty line would receive a no-fault benefit of \$18,613 per year. In the absence of the injury, that same person's income on an after-tax basis, using 1988 rates of tax, would be \$20,865, or over \$2,250 more than the no-fault benefit.

The SPRC is concerned that families such as this, at or below the poverty line, typically have combined federal and provincial average tax rates which are far below 20 per cent and are the very people who can least afford a 10 per cent cut in income while at the same time having to deal with the fallout from an accident.

We are also concerned, and the legislation is unclear on this, as to whether the offset for employment-related disability benefits will be calculated gross or net of tax. If an accident victim has to deduct his full employment-related disability benefit from 80 per cent of his salary in order to determine his no-fault benefit and then he has to pay income tax on the disability benefit, his net compensation will fall below 80 per cent of his gross income.

The SPRC is concerned about the fact that no-fault benefits are not indexed to the consumer price index in Bill 68. For a person off work a number of years and excluded by the threshold from seeking compensation for economic losses over and above the no-fault levels, inflation will erode the purchasing power of no-fault benefits substantially.

I have got a table there. You can see the erosion illustrated. At a five per cent inflation rate, a benefit of \$450 per week in 1990 has the purchasing power of \$276 by the year 2000 and by the year 2010 will only buy \$170 worth of today's goods. If one looks at a six per cent inflation rate, the erosion occurs much faster. Does anyone sitting around this table seriously believe that a family of four can live on that benefit?

The real villain of the piece, in our view, is the verbal threshold. I call your attention to the remarks of Mr Justice Osborne:

"I reject threshold no-fault. Threshold no-fault is relatively inefficient and unnecessarily arbitrary. There will be no, or minimal, savings on transaction costs in threshold no-fault. However precise the threshold may be, there will inevitably be disputes about who is out and who is in. I think it is abundantly clear that cost is the singular rationale underlying threshold no-fault. That makes a consideration as to who is in and who is out in human terms redundant and irrelevant. To provide reasonable no-fault benefits and at the same time to be cost-effective, the threshold must deny nonpecuniary compensation"—and I underline the words "nonpecuniary compensation"—"to a substantial number of accident victims who would otherwise be entitled to such compensation. That is necessarily arbitrary and in many instances unfair. This threshold exclusion cannot be justified on the basis of excluding small cases from the system. In their application, thresholds, to be cost-effective, must exclude many cases that no one could suggest involve minor injuries."

There is also a quote there from the Kruger reference report. In both cases, both Mr Justice

Osborne and Mr Kruger are talking about a threshold that excludes only compensation for noneconomic loss, that is, for pain and suffering, so they are discussing a different threshold than the one in Bill 68. The one in Bill 68 goes considerably further, denying compensation not only for noneconomic loss but also for economic losses in excess of the no-fault levels unless the threshold is crossed.

Even the Insurance Bureau of Canada, in its submission to the Osborne commission, did not dare to ask for so stringent a criterion for access to the tort system for innocent victims of automobile accidents. You will know that the IBC asked for restrictions on the right to recover noneconomic losses, using a very similar threshold to that included in Bill 68.

However, for moderately to seriously injured persons whose injuries do not carry them through the threshold, economic losses in excess can be substantial indeed. That is one of the things that is the thrust of our presentation. As the Kruger report notes:

"Mr Justice Osborne was critical of this threshold and dismissed it as unduly restrictive and 'designed to keep claimants out of the system for cost reasons, not to let the seriously injured in' (Osborne inquiry report, at 552-57). In light of the evidence before the board concerning the effect of thresholds that require proof of permanency and objective manifestation, very serious analysis of such thresholds is required, as their only merit would appear to be the possibility of premium reductions."

The SPRC is concerned that the burden of eliminating the right of recovery for noneconomic loss will fall most heavily on those outside the labour force—homemakers and the elderly, for example—for whom, according to the Kruger report, these losses will constitute the largest portion of a claim.

The SPRC is further concerned that denial of the right to recover economic losses in excess of no-fault levels will burden arbitrarily and disproportionately three groups of innocent accident victims: children, students, and the newly employed, who will be unable to insure future growth in their earnings; persons temporarily unemployed or unemployed—for example, married women who leave the labour force to start a family and are injured before they get back in—for whom current earnings do not reflect earnings capacity; and, of course, the self-employed, including farm families, who are just in the process of building up their businesses.

The argument may be raised that this defect will be covered by requiring insurers to offer layered coverage for economic losses in excess. However, I submit to you that even with this provision, there will be substantial losses that are no longer insurable.

There are insurance markets being closed by Bill 68: most notably, future growth in earnings and fringe benefit losses, not to mention noneconomic losses. In its application, this inability to insure a future growth in earnings will impact most heavily on young people injured before or just at the start of their working lives. Kids, yours and mine, are the real losers under this legislation. They will no longer be able to insure their potential future incomes from loss at the hands of negligent drivers.

To my knowledge, there are no other insurance markets that offer coverage for potential earnings. You simply cannot insure those earnings. So unless you get through the threshold, you cannot insure potential earnings under the terms of Bill 68, although you can, under the current system, seek to recover such losses. Even the ability to purchase fully indexed coverage for economic losses in excess of no-fault levels would not provide nearly enough coverage for these types of losses in many cases.

1300

What I would like to say is that for those injuries that do not allow access to the courts for recovery of excess economic loss, the potential exists in Bill 68 for the threshold restriction to deny people the right to recover literally hundreds of thousands of dollars. Rather than going through line by line, I have a long example over the next several pages of my submission. Let me summarize it briefly for you.

I am looking at a woman who has completed her schooling in preparation of becoming an elementary teacher. I look at two simple cases: First of all, what happens to her under the system if she is injured before she actually has a job; and second, if she is injured the day she starts her job. The real point here is that it is people at the front end of their careers who will suffer most by losing the right to recover losses in court.

According to a salary grid I consulted for a Niagara area board of education, she starts her career at \$25,951 a year. Shortly after starting her job she suffers one of the types of injuries that Dr Norman White talked about last week, organic brain syndrome. He assures me that this is an injury that is contentious and that would be disputed in the courts, and it is possible it would not get through the threshold. If this is the case

and she is in fact unable to work at all in future and has no prospect of being rehabilitated, she will get disability benefits that total not quite \$400 a week, consisting of \$333 from her school board disability insurance and \$66.54 in no-fault benefits. I have assumed that these benefits will continue for the rest of her life.

Assuming that her injury does not allow her through the threshold, the question then is, how much loss in excess of the no-fault benefits actually arises? How much money would we have to give this lady today in a lump sum to pay her the amount she will lose over and above the no-fault benefits year by year over the rest of her life, and the lump sum will run out at the instant the last loss is paid? The answer is \$748,000.

If the injury had occurred while she was in the last year of teachers' college but before she had found a permanent job, she would get \$185 a week, possibly for as little as three years. Under these conditions and assuming she got \$185 a week for the rest of her life, it would take \$894,000 to pay her economic losses in excess of the level of no-fault benefits.

There are a couple of other examples there. I indicate that if no-fault benefits are fully indexed, these losses are reduced to \$417,000 in the first case and \$741,000 in the second case.

The losses reflect the workings of inflation and things that economists call experience and productivity factors, and also of fringe benefits in determining economic loss. For young people, these components of loss are precluded from coverage totally by Bill 68.

Many other examples of the impact of the proposed threshold on the potential recovery for economic losses by innocent accident victims are possible. A married woman who leaves the labour force for more than 180 days to start a family, and is injured in a way that does not pass the threshold before she gets back in the labour force, will receive benefits of \$185 a week, possibly for only three years. If she cannot go back to work, she loses her entire career earnings and gets \$185 a week at maximum to replace a career of earnings that have been lost. Individuals forced to make career changes from better-paying to lesser-paying careers as a result of closed-head injuries, stress disorders, serious chronic pain and serious nonpermanent injury will be unable to recover their full economic losses. Many motor vehicle accidents, we are assured, are of these types.

On the basis of examples such as these, can you in good conscience support legislation that is capable of denying innocent accident victims the

right to seek compensation for potentially staggering economic losses? Why should a young girl just embarking on a teaching career, who has had her career taken away from her by someone else's negligence, be doomed also to a life of poverty?

What is automobile liability insurance for, if not to cover cases like this? It is quite one thing to deny pain and suffering compensation in minor whiplash cases, and quite another to use the threshold to deny compensation for economic losses of such magnitude. Why is our hypothetical teacher more worthy of full compensation if she is rendered unemployable by a demonstrably physical injury, than by a head injury that can only be inferred by neuropsychological examination? Either way, she loses the same amount. How can Mr Nixon claim, as he did at the Advocates' Society in November, that this legislation has integrity, when it is capable of denying compensation in such arbitrary and uneven ways to people?

Ladies and gentlemen, we urge you to study this legislation in its full detail with a view to eliminating this blight from the legislation. How can you possibly believe that the people of Ontario will support such an outrageous proposal once they come to understand it? If it is not the intention of Bill 68 to deny full compensation to people with such losses, then why is the government running the risk of doing just that with the proposed threshold language?

Finally, we are concerned that the government is acting too much as an interested party in the promotion of this legislation and is neglecting its duty to fully inform the public as to the bargain it is getting under the terms of Bill 68. We fear also that the public is being distracted from any hope of understanding the impact of this legislation by extraneous argument and media sideshows.

Insurance is a very complex product. Most people probably learn the kind of coverage they have after they have had the misfortune of having an accident and have to seek compensation. I think they have little hope of understanding what Bill 68 will mean to them. This fact makes it very easy for the government to take things away—that is, to reduce coverage, and that is what Bill 68 is about; it is a reduction in coverage and not an increase for innocent accident victims—without people noticing or fully appreciating the implications of such changes. Just as it is a copout for what the courts decide the threshold means rather than making the language explicit in the legislation, it is a copout to capitalize on consumer ignorance to take away insurance coverage that

cannot be seen due to the complexity of the product.

We challenge you in the government to go into the community and tell people who the principal losers under this legislation will be: the innocent accident victims of the future, the poor, the young, married women, the elderly, the self-employed, union members and teachers. They are all on the hit list of this legislation and they will be the ones who will suffer most if this legislation is passed. You have heard estimates during these hearings, that the proposed threshold will deny \$630 million in accident benefits to injured innocent parties in the first year of the plan on the basis that the threshold screens out 90 per cent of innocent victims.

We understand that the net cost of beefing up the no-fault benefits, that is, the entire package, is only \$129 million, a figure more than fully covered by the elimination of the OHIP bulk subrogation and the three per cent premium tax. Bill 68 clearly takes away more than it gives, all at the expense of innocent accident victims. It is like Robin Hood in reverse; innocent victims are robbed to pay at-fault drivers and the insurance companies, but no one in the government is saying this publicly.

Tell people what the legislation is taking away and let people, through direct contact and the polls, tell you what they think of it. For innocent victims, the loss of rights, protection and coverage under Bill 68 is potentially devastating. You owe it to the people of Ontario to describe as fully as possible what this legislation will mean before considering passage. The cost of retaining the present system is perhaps \$125 to \$250 a year, based on the range of estimates of adequate rates presented to the Ontario Automobile Insurance Board rate hearing. The savings from eliminating double recovery, that is, the collateral benefit rule, from acquiring structured settlements and from various other forms suggested by Mr Justice Osborne would, in his view, more than offset the costs of increasing and improving no-fault coverage along the lines that he suggested, and indeed along the lines that these changes have been incorporated into Bill 68.

1310

Where is the need to go further than this, to push the no-fault benefit levels below those recommended even by the Insurance Bureau of Canada in its submission to the Osborne commission, to exclude indexing and to introduce so stringent a threshold, given the admittedly speculative nature and serious data problems in the rate-making exercise conducted by the

OAIB, and given the effects that this threshold will have on innocent accident victims?

The government should release its own costing data on Bill 68 to allow public assessment of the assumptions and findings. The government's lack of openness and incomplete disclosure of the impacts of this legislation do not enhance its credibility in promoting it. It is not fair to be making a decision on Bill 68 on the basis of so unbalanced a presentation. Indeed, the public may not be so upset with insurance premium increases if it understands that the increases have some justification.

If third-party benefit reductions are required to keep premium increases down, then a deductible, either in absolute or percentage terms, from losses in excess of no-fault benefits seems to us to be a much fairer way for holding the line on premiums. This approach accords with ability-to-pay notions that are incorporated in our income tax system and appears far fairer than a system that is capable of denying \$5,000 in compensation to one person and, with the same brush, \$500,000 in compensation to someone else. Such a deductible is visible, but it can be sold to the public on the basis that this is the price of keeping automobile insurance rates down.

The government clearly has a wide range of options, including government ownership, which we understand it does not like, or even deregulation. We believe the government owes a duty to the public to analyse fully the costs and benefits of these options and to provide a rigorous justification for its ultimate choice.

The government has yet to provide a satisfactory explanation of why it has chosen the system proposed in Bill 68 and why it has chosen to ignore, in the process, the recommendations of two comprehensive analyses by its own experts that quite clearly reject the threshold no-fault system.

I will end with a remark that Dr Norman White made to me on the way back from Hamilton after his presentation last week. Talking about Bill 68, he said, "There's a lot less here than meets the eye." In terms of compensating innocent accident victims, this is a fair summary of the bill. We urge you in the strongest terms to find a better way.

Mr Philip: You make a number of interesting points, one of which is that the Liberal government has actually given the insurance companies more than even they dared to ask for before the Osborne commission. You also point out that if a person is injured early in his or her career, the person will not be adequately compensated in

any way for the loss of potential income, which one can expect in the case of the teacher that you used, but in the case of many other professions as well.

Mr Welland: That is correct.

Mr Philip: The question that I would like to ask, though, that you have not covered extensively in your brief or in your presentation, but that is covered on page 2 of the yellow summary, is your comment that "Homemakers and the elderly who are the victims of someone else's negligence will be most heavily burdened by the loss of the right to recover noneconomic losses."

As someone involved with the Social Planning and Research Council, I wonder if you can give us an example, perhaps, of what you have in mind in that statement.

Mr Welland: Take an elderly person, for example. Our understanding, and again, this is from a reading of the Osborne commission report, is that compensation for pain and suffering tends to be the largest fraction. Some 60 per cent of the total claim for such a person is for pain and suffering. That may change slightly because there are some no-fault benefits available now that were not available previously.

The basis for that statement is simply the elderly. For those people, according to Osborne, noneconomic losses constitute the largest portion of the claim and then, by inference, would be most heavily burdened if the right to sue were taken away.

Mr Kormos: We have been hearing horror stories day after day about the treatment of innocent victims at the hands of the insurance industry. At the same time, the insurance industry is, by and large, the only segment of the province that has come in here before this committee and supported this legislation. They come in here like Mother Teresas, as if all those things that were being said about them just simply could not be true. They come in, cap in hand, and they take some great pride in telling the world that they endorse this new liberal system because it is going to deliver more to more; and in fact we know that they have a big stake in this bill because we are talking about new profits for them, windfall profits of anywhere to \$600 million, \$700 million or perhaps even \$800 million in the first year alone. The insurance industry appears to be capable of going to virtually any length to ensure that this legislation is passed, and I guess to a private corporate system like the insurance industry \$700 million or maybe \$800 million is enough of an incentive to go to those lengths.

Mr Welland: One would think so.

Mr Kormos: They have been very critical of the people who have dared criticize this legislation, even suggesting that people like yourself have no idea what you are talking about. What do you say to that?

Mr Welland: That is fundamentally not true. I have spent the last four months studying this legislation.

Ms Oddie Munro: First of all, I am very pleased to see the representation from Hamilton. I did not have the opportunity to say to the members of the Hamilton Law Association that I would have expected them to be here in a variety of ways, because I think they have represented people well in Hamilton. I am also aware of your work on social planning and research councils. I appreciate the time you have taken to be here, and I think it is also fair to say that it is not our intention to demean any professional or any individual who comes before the committee.

I am interested in your concern that perhaps the omission of the psychological, psychiatric and trauma from the threshold would see a number of innocent victims not being allowed to sue. It is my understanding that then we are working on the particular phraseology, that the regulations in fact do contain references to those professionals as care givers and as manifestations of an injury and I am wondering if you care to comment on that, although you may not have the up-to-date regulations, or if you would care to let me know how you would phrase the verbal threshold in order to pick up many of the people you say—you are looking at noneconomic loss—who would not be able to sue for noneconomic loss. I had felt that the stress, trauma and psychological point of view would alleviate a lot of that, not only on the no-fault side, but on the right-to-sue-side.

Mr Welland: Dr White gave me about a 45-minute lecture, of which I have about six pages of notes, on the different types of injuries. I am not a medical practitioner and I know nothing of the types of injuries of which he speaks. But he assures me that these types of injuries are capable of destroying a career. In fact, I have spoken of both noneconomic and economic losses and the long example in the body of our submission is an example related just to economic loss; it does not even get into the issue of noneconomic loss.

In fairness, the board itself has not taken a position or even considered appropriate wording of the threshold so as to incorporate those types of injuries, and I do not think that we have the expertise on the board to actually do that. What

we are concerned about is what people whom we know in the medical profession are telling us, that these types of injuries will be highly contentious and that many victims who have these types of injuries will not get through the threshold.

One of the things that has happened, and in fact one of the benefits of the court system, is that it fosters research. It is kind of a cutting edge and testing ground for research developments in medicine and it is only in the last 10 years that something like organic brain syndrome, according to Dr White, has been detectable and identified as an injury that is capable of putting a person out of work. It looks maybe like a psychological problem and I could go further, the no-fault portion of the regulations recognizes psychological trauma and the verbal threshold does not.

There is some suggestion, perhaps, that you are not at fault at least up to the no-fault levels, but if you have some psychological trauma or a stress disorder that is somehow beyond that level it is your fault, or it is treatable and therefore nonpermanent.

Dr White assures me that the kind of injuries that he is talking about are very subtle, very difficult to detect and that they really are capable of depriving a person of the ability to work.

The Chair: I am going to have to interject here. Thank you very much for your presentation.

I have Dr McMaster from the central region of the Ontario Psychological Association. Your brief has been circulated by the clerk to the committee. We have half an hour in which to hear it and if you could save some time for some questions and comments, we would appreciate it. Please proceed.

1320

ONTARIO PSYCHOLOGICAL ASSOCIATION

Dr McMaster: Allow me to introduce myself. I am Dr Carol McMaster. I am a psychologist in private practice in Barrie. I am here on behalf of the central region of the Ontario Psychological Association. I have been a clinical psychologist for over 15 years and I am a former president of the Ontario Psychological Association.

The purpose of this brief is to set out some major concerns in the proposed act for no-fault motor vehicle insurance.

As health care professionals many clinical psychologists are involved on a regular basis in the evaluation, ongoing treatment and rehabilita-

tion of Ontario residents who have suffered from a wide range of injuries, including victims of motor vehicle accidents. As we are already participants in this process, we wish to put forward our concerns now to ensure, on behalf of our patients, that the existing levels of service continue to be available to them and, if possible, to ensure that improvements in the services will be made.

Our general areas of concern with the act are four: (1) access for compensation be limited to physical injuries only; (2) definition of duly qualified medical practitioner; (3) access to speedy and complete rehabilitation benefits; and (4) the makeup of the tribunal provided for in the proposed regulations.

First, allow me to deal with access to compensation. Section 231 of the proposed act defines the threshold of eligibility in order to sue for loss of damages as limited solely to permanent serious disfigurement or permanent serious impairment of an important bodily function caused by a continuing injury which is physical in nature.

We submit that this is too narrow a restriction. The common law courts have long recognized mental or psychological injury and have given right to compensation for it. In any event, there will be the greatest difficulty in determining what is purely a physical injury. For example, would cognitive or intellectual impairment following a bad head injury which did not clearly show up on a brain scan be classified as physical or psychological? Many of these types of injuries are well known for not showing up with conclusive physical evidence. Yet the impairments are clearly shown upon psychological and neuropsychological testing and they indeed appear frequently in the daily performance of the injured person's activities.

These impairments are such straightforward things as memory function, problem solving, organizational skills, literacy skills, calculating skills. How long would a person have to wait before a determination was made that these impairments were purely physical in nature? As well, individuals undergoing these impairments experience purely psychological components. Their loss of self-esteem accompanies diminishment of intellectual functioning.

Individuals who suffer soft tissue injuries fall into another category. Their injuries frequently do not show up on the purely concrete physical tests, but these injuries are accompanied by severe chronic pain; slowing of motor co-ordination, loss of manual dexterity, diminish-

ment in performance requiring hand and finger dexterity. Injured persons with chronic pain cope with fatigue, headache; the stress of the pain puts them in a position where they are vulnerable and overloaded. Would these conditions be eliminated as not purely physical? Are they a combination? Where do we draw the line?

More frequently, purely psychological difficulties arise as well following the trauma of a motor vehicle accident. These parallel what is described in layman's terms as shock. Certainly the source of post-traumatic stress syndrome has been well documented in the scientific literature for many years and these have been recognized and compensated since the end of the First World War.

Most other forms of compensation recognize mental and psychological injury. The Workers' Compensation Act clearly identified psychological injury and compensates. The Criminal Injuries Compensation Board has been very active in compensating victims for psychological injury and the courts of Ontario have continued to compensate individuals for psychological injury in accidents that are nonvehicle accidents.

There is an inconsistency in the proposed act and its regulations. In the act the compensation issue is confined to injury which is purely physical. Within the regulation section of the act it is stated that treatment and evaluation for the psychological components of injuries are to be provided. The drafters of the regulations clearly saw the need to include the coverage for rehabilitation benefits. We submit that the coverage for compensation purposes should be clearly expressed in the act.

Our second concern is the definition of "duly qualified medical practitioner."

Clause 21(1)(c) requires the insured to provide a certificate from a duly qualified medical practitioner as to the cause and nature of the injury for which the claim is made, the probable duration of the disability and the need for rehabilitation.

We would submit that the term "duly qualified medical practitioner", which would seem to include only physicians licensed in Ontario, should carry a wider definition.

Most physicians are not trained in psychological assessment and treatment. Psychologists are not named to do this work in the act, nor will they be allowed to issue certificates. Thus the group who has the most qualifications to do the work will not be allowed to do it and the injured will be denied that service.

Section 21 goes on to state that the insurer has the right to require a physical and mental examination of the insured person by a duly qualified medical practitioner or a chiropractor. As stated, medical practitioners in general do not have training in psychology and we seriously doubt that chiropractors do. In any event, a mental examination should be conducted only by a psychologist or a psychiatrist.

It is again worth noting that in other federal and provincial legislation mental examinations are confined to psychologists and psychiatrists, in particular those before the youth court with respect to young offenders, those with offences before the criminal courts and custody and access assessments for divorce purposes in the Ontario Supreme Court.

Our third concern involves access to speedy and complete rehabilitation benefits. We are pleased to see that the psychological component of injury is included in the rehabilitation benefits set out. However, we are concerned from past experience that such benefits are slow to be provided to many injured persons. Reimbursement is slow. Individuals end up paying out of their own pockets in order to get evaluation and treatment for non-OHIP-based services. As well, individuals are not usually referred to non-OHIP-based services such as psychology through the publicly funded health care system. Individuals are referred to the non-OHIP-based services through their legal counsel, primarily, and some through social agencies, most particularly the vocational rehabilitation branch of the Ministry of Community and Social Services.

The availability of rehabilitation and evaluation treatment services, particularly in psychological and neuropsychological services, are not well understood among the public, among the health care sector, particularly that which is publicly funded. If one looks at the practices of family physicians one can clearly see why this would be. Most family physicians include practices which have a wide range of families that remain with them for many years. At any given time, only a few individuals and their case load will be involved in the recovery from a motor vehicle accident.

It would only be through those few patients that they would come to investigate the availability of such services. It has been our experience that family doctors are supportive to their patients who have been in motor vehicle accidents and advise them to obtain lawyers and to obtain the non-OHIP-based services such as psychological service through their lawyers.

1330

Our final concern is the makeup of the tribunal, which we understand will be established for the purposes of overseeing this act. We would strongly recommend that at least one senior member of the psychological profession be appointed to that tribunal, and preferably one in clinical practice and not an academic. We would also recommend that the tribunal have appointees from many of the alternative health care disciplines that are involved in treatment and rehabilitation of those injured in motor vehicle accidents.

Too frequently, when tribunals are established, the appointees are frequently drawn from lawyers and physicians and other professions are simply overlooked. We feel that our recommendation would be an important step in reflecting the spirit of the act towards total rehabilitation of the injured individual and it would clearly demonstrate the government's commitment to a focus on rehabilitation in the new act.

In conclusion, our group would like to make the following recommendations for changes in the proposed no-fault scheme. First, we would recommend that the threshold for civil action in the courts must not discriminate against individuals with psychological injuries, and we would suggest that the wording be changed to include the term "psychological in nature" as well as physical.

Second, under the regulations, we would ask that the regulations of the act clearly identify psychological services to be provided by psychologists and not leave this open-ended for other professions. It is noted that the other health care professionals are consistently named to provide their services in the regulations. Consistent with this recommendation, we would strongly recommend, for any areas with reference to mental examination, that those be clearly identified to be conducted by a duly qualified psychiatrist or psychologist, and that they not read "duly qualified medical practitioner or chiropractor". We would stress that this is for mental examination only.

Third, we would recommend that a public education program be conducted to help people become aware of the services that are needed in rehabilitation, and particularly the services that are not covered by OHIP. We would also suggest that this education program begin to educate, first, individuals working in the insurance industry, that it involve health care practitioners

in the public sector and, most importantly, the consumers.

Finally, we would recommend that at least one senior clinical psychologist be appointed to the proposed tribunal and recommend the appointments of other nonphysician health care providers to the proposed tribunal. I thank you for the opportunity to be able to speak to you today.

Mr Kormos: Perhaps, quite briefly, there has been some concern expressed by helping professions, health care professions included among those that the impact of threshold, and the expectations that the system is going to have of medical personnel, is such that injured people may find themselves in a position where they find it harder and harder to get access to helping professionals, rather than easier and easier. That is to say that some helping professionals are going to necessarily feel disinclined to get involved in a treatment scenario wherein there is going to be a threshold issue. Could you comment on that?

Dr McMaster: My concern is the access to those services and I feel that people do not know that the services exist. To date we have a no-fault system in Ontario. People are entitled to \$25,000 worth of rehabilitation benefits. In my experience, very few people access those benefits; most come via their lawyers. When they usually come to seek services they come quite far along in their recovery process.

From reading the act and the proposals suggested, it would seem to me that the process would be even more cumbersome. People are not going to go to services that are not covered by OHIP where they are taking a chance as to whether they are going to be covered until they have final approval from the tribunal and a decision is made. If it is based on purely physical injury and the example I have given you—and I know everybody else who has presented to you probably has also listed head injury, being the classical case. How long are these people going to have to wait before a decision will be made?

Certainly, if they have no income coming in, they are not going to take a chance at paying out of their pocket for a service that they do not understand in the first place, that has not been presented to them, and that they have been told is iffy. So I am very fearful that people are going to lose access to those services.

Mr Kormos: There is no real incentive for the insurer to educate the injured victim about those services because the more they utilize them the more it is going to cost the insurer. And his goal is to maximize profits, to collect the maximum

amount of premiums and pay out the least amount of compensation. Do you see that as a reasonably accurate assessment?

Dr McMaster: That is why we are recommending a massive education campaign, and we are recommending that the government should support that education so that people realize that these rehabilitation services are available to them, that they can use them and that they cannot be denied them. They are a fundamental right to those individuals.

Mr Kormos: The no-fault benefits which have been in this province, as you indicate, for a long time; indeed, over 10 years now we have had no-fault, so there is nothing new about no-fault, that is really no big deal, it is the bottom line. There is some timely and more than appropriate upgrading of these figures. The government has been sitting on its hands. It should have been doing this a long time ago because it is done by regulation and could have been effected a long time ago. But it remains that the no-faults are being enhanced and, as you say, brought up to 1990 standards. So be it, in some regards at the very least, in terms of wage replacement.

Osborne in his study found that in Michigan when they introduced a threshold system, not quite as onerous as this, and enhanced the no-faults there, what that did was made the insurance companies all that much more, I guess, parsimonious, and more and more people had to hire lawyers and sue their own insurers to get their no-faults paid.

In view of what has happened here, could you comment on what Michigan experienced and what Osborne suggests will happen here? That is to say, that you can enhance the no-faults, but all that is going to happen is that people are going to have to hire lawyers to collect what is rightly theirs because the insurance companies once again want to collect as much money as possible by way of premiums and pay out as little as possible by way of compensation.

Dr McMaster: As I stated before, I think people need to be educated to this. And I think that the government has a responsibility to ensure that they are entitled to those services and to educate them to use that no-fault benefit. Extending it to \$500,000 from \$25,000, if they do not use it in the first place, really is not a very valuable advantage to anybody in terms of their gains from an act such as this.

Mr Ferraro: If I can, just for my benefit, ask you to clarify what you mean by tribunal. Are you referring to the accident benefits advisory

committee which talks about the no-fault benefits or the commission itself?

Dr McMaster: I think a combination thereof. I was not entirely clear on how it would be set up. I spoke with my member of parliament, the member for Simcoe Centre (Mr Owen), and he referred to it more generically as a tribunal and indicated that it would be an important issue.

Ms Oddie Munro: I think on page 3, the definition of "duly qualified medical practitioner"; it is my understanding—and we could seek clarification from the ministry officials—that in fact consideration has been going to appropriate use of psychological professionals and the kinds of testing that would be appropriate.

Dr McMaster: You mean that it will be changed in the wording. Our concern is that the wording be changed to reflect that.

Ms Oddie Munro: I know. That is why I am just saying that maybe rather than my going on and on, I ask for clarification.

Mr Ferraro: Let me add a little bit and maybe Ms Parrish will add a little bit more, but you are right, Ms Oddie Munro. The definition, as we all know, originally said "physician" and has subsequently been enhanced to include medical adviser. I can tell you that the government is actively, seriously looking at expanding that to include, conceivably, occupational therapists, psychologists, indeed, even those who are not in the medical field per se, but pertaining to access, if you will, to rehabilitative and long-term care funds. So we are sensitive to that.

Dr McMaster: We are concerned particularly about the term "mental exam", because we do feel that many people who are not qualified are doing those under the phrase of "duly qualified medical practitioner".

Mr Ferraro: It is a legitimate concern.

Ms Oddie Munro: I guess when the drafters of the bill looked at the increase in accessible and available benefits on the no-fault side, we felt that there were many, many people who just simply had not ever received those benefits or did not know that they existed. So while there are probably all sorts of reasons why people did not use their \$25,000 we certainly will be putting a primary emphasis on the communication to the public of what kinds of rehab benefits are available. I would hate to think that in raising the limit to \$500,000 that no one would use it. I wonder if you would care to comment on that, because I am wondering what the block was, or why people did not use up to the limit on the existing \$25,000.

1340

Dr McMaster: I think lack of information. Unless people were advised by their lawyers, it seemed as though they did not use it. Sometimes, frequently, I think, people used existing government-based services, such as vocational rehabilitation, which did not have access to as many resources. Frequently they would refer them back to the no-fault portion, indicating that they could be obtaining additional services. Of course, there is a cap on what the Ministry of Community and Social Services vocational rehabilitation can afford to pay. I think those have been the areas where people have been informed, but generally people are not.

As I have said, I have been working in this field for 15 years. I can think of two cases where an insurance adjuster sent a person directly for the psychological services benefit portion under the no-fault. That was really encouraging, and both those cases involved rehabilitation and retraining of illiterate individuals who had been disabled in a motor vehicle accident. Whether it was just that illiteracy drove the point home more is hard to say, but the point is that people simply are not told about it. In talking with insurance adjusters, I found that frequently they do not know, or at least they lead me to believe they do not know. They always say, "Oh, I'm surprised." I do not know why they would say that.

Mr J. B. Nixon: Very quickly, there was an interesting development that came out in one of the lawyer's magazines, I think just this week, the formation of a rehabilitation clinic by a lawyer and an insurance broker, jointly, which will provide a variety of medical services, and I say that broadly speaking. It includes psychologists, physiotherapists, occupational rehabilitation and so on and so forth.

Obviously, anything that is doing those types of things I think looks at first blush like it is a good thing. The argument made by the lawyer for forming this independent health facility was that with the greatly expanded rehabilitation benefits to be introduced with Bill 68, there was now a real opportunity, which had not been there before, to ensure services got to the clients. Do you see that type of development coming elsewhere, or have you thought much about that?

Dr McMaster: Of more expansion in rehabilitation?

Mr J. B. Nixon: Yes.

Dr McMaster: It is a possibility, if people are informed, but I do think the need for education

and to inform them is imperative, because that just is not happening.

I think the other thing would be to ensure that those who stand to make a profit from that not happening do not get an opportunity to scuttle such efforts or whatever, and I think that can happen. I have certainly seen, for example, efforts with pain clinics, where people have been told: "Oh, don't go there. They can't help you. They won't do anything."

The Chair: Thank you very much for your recommendations.

From Family Mediation Inc, we have Barry Brown. We have had your presentation circulated by the clerk.

Mr Brown: I would not say it is a copy of my presentation. It is useful information, I believe, to assist, hopefully.

The Chair: The next half-hour is yours. If you can leave some time for comments and discussion, we would appreciate it. Please proceed.

FAMILY MEDIATION INC

Mr Brown: First, as my handout notes, I am a master of social work. I have a private practice in Toronto. I work with families suffering from interactional dysfunction—unhappy folks, generally. A part of my practice involves working with families where the dysfunction is primarily based in a personal injury, where a member of the family or members of the family have been involved in a personal injury where pain, chronic pain or a closed-head injury is playing a role in the dysfunction of the family.

I have a number of concerns regarding the legislation as it stands, and I am sharing these concerns because I see directly what is happening to many families where an accident, a personal injury, is involved.

With regard to the proposed legislation, as I understand it, rehabilitation funding is not available to the family, rehabilitation moneys are made solely available to the victim. Granted this is required, granted this is obvious, this makes sense, but the thinking to me is extremely backward inasmuch as clearly, from a systemic orientation, the victim's family is also involved in the accident, not physically, but certainly emotionally and psychologically.

I have put together a number of research snippets to illustrate what happens to the members of a family where there is a member from within involved in a serious injury.

To give you one in particular, a 34-year-old mother was involved in a motor vehicle accident and is suffering from chronic pain—no broken

bones, chronic pain. She had been a participatory spouse, as I understand it, participating within a caring and supportive relationship and contributing to the family financially. Her children were prospering. The advent of the accident resulted in the pain that she could not and cannot tolerate.

Last week she assaulted her 11-year-old son. He was not cleaning up his room as she had requested him to do. He grabbed her hands and stopped her from hitting him. She kicked him. The father came home and stopped the process.

This family was about that far from children's aid intervention. The father has been assaulted. There is a four-year-old daughter. She generally, as she states, withdraws to her room and cries when her parents are in conflict or her mother is in conflict with her older brother.

The insurance company, to its credit, said, "We realize that we were spinning our wheels with regard to helping this woman, with regard to offering her rehabilitation services." The extreme stress in that household was undermining all efforts on her behalf. The insurance company made the referral to assist this family in gaining a better understanding and regaining an emotional equilibrium to focus its members strengths on behalf of the family, on behalf of the victim, so as to allow for a continuation of the family with a greater sense of security and peace. The insurance company, to its credit, realized that the stress within that household was exacerbating this woman's pain. Through a pain management program, they had to learn that when stress could be diminished for this particular woman, her pain subsided to a degree. Stress within the family exacerbated that pain. Family counselling was requested—a wise referral.

The family, through research and through my personal practice, has been attributed a significant role in the patient's recovery from chronic illness. I am speaking specifically of chronic pain. Dysfunctional families can exacerbate and maintain chronic pain. Psychosocial and family variables account for a significant amount of the variance in pain intensity and interference for a personal injury victim. The emotional functioning of the spouse of a victim has bearing on the response of the patient to treatment. Enhancing marital relations can positively affect the emotional status of the personal injury victim.

I spoke of an insurance company, an adjuster, that referred a family to me. On too many occasions I have made phone calls on behalf of the families who have contacted my agency, requesting funding on behalf of this family to address marital dysfunction where stress and

pain is playing a role, in my opinion, in the dysfunction. I have been told on numerous occasions that funding under the present system focuses specifically on the victim.

You are shaking your head.

1350

Mr Ferraro: Let me clarify it for you.

Mr Brown: You may as well; shoot.

Mr Ferraro: I am sorry to interrupt your presentation, but your understanding of who would get the access to rehabilitative funds is, in my view, incorrect. If I may, and I would be happy to give you a copy of this, in the benefits, the regulations per se, part II, where it deals with supplementary medical, rehabilitation and long-term care benefits, subsection 6(1) states, "The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury as a result of an accident, all reasonable expenses resulting from the accident," and then it lists six. It is pretty comprehensive.

The definition of an "insured person," and I am being a little brief here, is, "the named insured, his or her spouse and any dependant of either of them who is not the occupant of an automobile or of railway rolling stock that runs on rails, who suffers physical, psychological or mental injury as a result of an accident." In short, Mr Brown, the family is included.

Mr Kormos: That is a maybe.

Mr Ferraro: That is not a maybe, it is in black and white.

Mr Brown: If I could comment between you fellows, I am not a lawyer—

Mr Ferraro: Neither am I.

Mr Brown: —I am not a legislator, and my information has come from my reading of the document, plus information from lawyers, and they were telling me, from their understanding—I am pleased to hear what you are saying, but perchance some greater clarification is required so that families can know there is recourse for them, because I did not read that into it myself.

Mr Ferraro: I would say to you, with great respect, to be totally candid, some of the information you received and which others may have indicated to you may have been from one of the earliest drafts. In fairness to everyone concerned, it was made substantively clearer, we think, in subsequent drafts.

Mr Brown: In which case, I say, excellent—good forethought.

Mr Ferraro: I am sorry for interrupting you.

Mr Brown: Please interrupt when necessary. I will continue on to other concerns.

A primary source of stress in the family where a member has been rendered unable to pursue gainful employment is the potential loss or the loss of the family home, the ability to maintain the family home monetarily. In a number of sad circumstances, I have witnessed families losing their homes and having to seek accommodation elsewhere, with friends, family or in rental facilities, when it was obvious, in my humble opinion, that these families were going to receive monetary recourse in the future for the damages done. I found it extremely frustrating and sad to witness the demise of the security of these families, with the knowledge that some time down the road a monetary life preserver would be available to them, but too late.

In the new legislation, as I understand it, unless an individual can reach threshold, permanent severe physical injury, the payment available is \$450 per week. Am I correct there?

Mr Ferraro: There is a top-up as well, but you are right.

Mr Brown: Ballpark? I should get information on these top-ups before I trundle on down.

Mr Ferraro: It is confusing.

Mr Brown: Okay. Thank you. My concern is—and you have heard this one before—in cases of soft tissue damage, closed-head injuries or not objectively observable physical injury, these families can end up in the street; \$450 a week, or however much more it is, may well not allow them to sustain themselves in their homes.

I do not see this as fair somehow, specifically if an individual is not at fault. The loss and the worry resultant on an inability to provide security for a family is debilitating to a family and, as I have seen, can cause the breakup of a family.

As long as threshold is as it is, and I presume it still is—is there a change to threshold yet? I am still okay there?

Mr Kormos: Mr Brown, there will be. The government is going to tinker with it and appear to be responsive to the community, and it is all part of the big scam, but there is not right now.

Mr Brown: I understand the delicate nature of this term “threshold.” How does one determine a closed-head injury that one cannot see? Chronic pain, generally, one cannot detect physically. Does one just leap on a hope of faith?

I understand the dilemma. I am not certain that I can offer guidelines with regard to that dilemma. I can only say, as a family practitioner

dealing with socioemotional dysfunction, that it is not correct, it is not fair that a family can face the loss of its primary source of security, that being the family home, because the victim does not suffer a loss of a limb that can be detected.

An interesting example is two clients I saw yesterday, two specific individuals, straight family therapy. A husband and wife came in. My door was locked. I followed them out into the hall, “Thank you very much, see you next week,” and the chap turned the handle, no go, so he unlocked the door.

Two hours later, my client was involved in a motor vehicle accident. He suffered a closed-head injury. He was physically okay. He was walking around; he was ambulatory; he drove to my office. The door was locked. He turned the door knob, he turned it again, and he looked around somewhat befuddled. He turned to me: “What do I do? How do I get out?” “Just turn the lock. Sorry. The secretary must have locked it.”

This individual is not working, understandably so. He is minimally functioning intellectually. He does not qualify to seek recourse in the courts. This is an individual who will receive, as I understand it, the \$450-plus. He will not be able to maintain his home. He will not be able to maintain his kids as he has, or his wife, who is still working.

I see this as unfair. This man has been diminished, esteem-wise, so significantly. Not only have his intellectual losses caused damage to his family, his withdrawal from the family in humiliation, understandable humiliation, has cost his family even more.

Under the new scheme, as I understand it, as it is proposed, there will be no recourse for this individual to regain a sense of security that he can offer to his family, to regain some sense that he is still providing for his children, for his wife.

This family, which is suffering as I have stated to you, will likely break up. I do not see them as being able to maintain themselves, but they are hanging on a hope. This case has been going on far too long, some seven years now, with tremendous frustration, tremendous monetary strain. I am hopeful that counselling intervention will salvage them, will refocus their strengths. Under the new scheme, I do not see any hope for this family.

This is a problem that I see that involves threshold. This individual suffers very real damage, in my humble opinion, not being a medical practitioner. He was somehow befuddled with regard to getting out of my office. He would have found his way out, no doubt. He

had a real estate company prior. He certainly does not now, and I understand why.

The definition of threshold, in my opinion, is inadequate to address the needs of the citizens of this province. It is too narrow.

I am concerned for the children in families where there have been major personal injuries. They will suffer without control. They will not be able to understand the ramifications that they are suffering. Spouses fearful of the loss of their security, spouses fearful for the continuance of their family as it had been, are generally less tolerant. These children will not be able to be parented as they had been, not only by the victim, who may be physically or mentally disabled, but by the other parent. That other parent frequently carries the burden of the family financially. That other parent must pick up the parenting load that the victim is no longer able to maintain. That other parent has been diminished by this process, meaning suffering of pain and loss of intellectual acuity.

The knowledge that at least there will be basic security available is a major boon to allow a family to maintain hope: "We'll make it somehow. At least we can still come home. At least we can still maintain a modicum of the lifestyle we had before." Take that away and the stress within the family will be increased. That stress will exacerbate the pain the victim is suffering; that will exacerbate parental conflict; that will further diminish the quality of life children in a family will receive.

1400

Again, my concern is that somehow individuals who do not meet the threshold must have some recourse in order to maintain an adequate degree of security, if not for themselves, for their children.

The Vice-Chair: Mr Brown, if I might interject, it might be wise if you try to come to an end so that there would be time for questions.

Mr B. Brown: Good, why do I not just leave it right there?

The Vice-Chair: Fair enough. I have two people at the moment, Mr Kormos and Mr Philip, for a total of five minutes.

Mr Kormos: Mr Brown, I see you are a member of the Ontario College of Certified Social Workers, the Ontario Association of Professional Social Workers, the Ontario Association for Family Mediation, the Association of Family and Conciliation Courts, American Orthopsychiatric Association—that one I am not—

Mr B. Brown: That is very informal.

Mr Kormos: And the Family Mediation organization of Canada.

I share your concern about the regulations and quite frankly, I can foresee lawyers for an insurance company arguing the niceties of it and suggesting that it is only relevant as to the individual who was involved in the accident, and that is to say that your services would be available to the individual who was in the motor vehicle. Your concern is that there are other people involved—there is a spouse, there are kids—who may not have been anywhere near the accident scene, but who ought to be involved in the therapeutic process that you can engage them in because they are part and parcel of the difficulty. Am I correct?

Mr B. Brown: They are part and parcel of the overall rehabilitation of the victim. Fairness also says that they are suffering the ramifications of the accident and they should be offered assistance. I pointed out that stress can exacerbate pain. If the spouse of a victim has a fuse that is this long and in frustration blows up frequently, understandably that is going to exacerbate stress. That can exacerbate the pain which will undermine—can undermine, at least—rehabilitation. It is a wise approach that says address the problem systemically; look at the interactional unit of a victim; focus energies. That makes sense.

Mr Kormos: I appreciate your comments today. I hope the government looks at that again and considers perhaps amendments to clarify it, to make sure that what it says is the case really is. I notice you practise up at 200 St Clair Avenue West here in Toronto under the name Barry Brown.

Mr B. Brown: Yes.

Mr Kormos: So people can find you in the phone book by looking up Brown, Barry, MSW.

Mr B. Brown: Barry Brown's house of misery never sleeps.

Mr Philip: I will certainly look you up if my colleague from the riding south of me, Dr Henderson, is not available and I may need your services some time. I guess all of us do need that kind of service at some time or another.

Mr B. Brown: Not all, thankfully.

Mr Philip: Most people do, if the statistics are correct from the Ontario Mental Health Foundation.

I guess the basic thrust, then, of what you are saying is that unless rehabilitation is approached from a holistic point of view, rehabilitation does not take place and not only the individual suffers,

but the family suffers and society suffers and inevitably the taxpayer suffers. What you are asking for, as I understand it, is that this be spelled out more in the regulation and in the legislation to ensure that those who would seek a holistic approach to healing will in fact be covered. Is that a fair summary of what you are saying?

Mr B. Brown: I would say yes.

Mr Philip: I wonder if you would agree with statements made by some other people who are concerned about this legislation, that in general the legislation tends to concentrate more on the compensation for a physical disability rather than a psychological disability, even though you and I, I think, would agree that psychological illness or hurt can be every bit as painful as the physiological part of the injury.

Mr B. Brown: And even more so because it is more difficult to understand it for the family members. The majority of the clients I see who have been involved in accidents suffer either from chronic pain or a mental dysfunction resultant of the accident; a closed-head injury, extremely damaging. There is no recourse for these folks and they can be disabled; as I pointed out with regard to one of my clients yesterday, difficulty finding out how to open the door. I agree with you.

Mr J. B. Nixon: I have two questions. The first is, I expect that you cannot quickly or automatically assess the problems faced by your patient or client on the first meeting in every case; is that true?

Mr B. Brown: Yes, correct.

Mr J. B. Nixon: Is there any rule of thumb that would suggest how long it takes?

Mr B. Brown: Yes. If I could briefly outline, in a moment, the process that one would go through.

Mr J. B. Nixon: Yes.

Mr B. Brown: I meet with the family as a unit to allow it an understanding of what has happened to it. I must first add that I am receiving this as a referral from an insurance company, a rehabilitation individual, a lawyer or a medical practitioner, meaning there is an understanding that there is a problem in the family. I am a social worker. I meet with spouses jointly, with spouses individually, with the children as a unit.

I am looking for an understanding of pre-accident functioning: How did this family manage prior to the accident? What were relationships like prior to the accident? What is the background of this family? The tricky part is, I am having to

go on their verbal say-so. My investigation is as thorough and as in-depth as I can make it. With an understanding of how this family managed before, I am able to ascertain if there is a difference now.

On occasion I find a family that is no worse now than before. Somebody was a chronic alcoholic and an abusive spouse prior and still is, but now that person has a headache. This is not an appropriate family to address via insurance moneys; I refer this kind of family to a public agency. But I spend approximately five hours in interviewing sessions to get an understanding of the dynamics that existed in this family prior to the accident and following, to determine what kind of input is required and whether it is appropriate. Does that answer your question?

Mr J. B. Nixon: Yes, it does. Following up on that, are you ever called to court to give expert testimony as to the amount of damages that the injured victim and his or her family would be entitled to?

Mr B. Brown: The word "amount" is tricky. I have been in court rarely. I explain my understanding of the ramifications to the family resultant of the accident. The amount—10, 15 per cent worse—I find that an impossible task. I can focus on the changed marital circumstances, the changed parent-child circumstances, and do.

Mr J. B. Nixon: You are not alone. We had a Professor Glasbeek, who is a professor of law, here before the committee today and he gave not only his personal view but the view of several judges that it is an impossible task to set an amount to those intangible losses.

Mr B. Brown: I understand. We are not looking at loss of income, we are looking at damage to a family. As you have heard, I say I am particularly concerned with damages to a family that can preclude its being able to maintain its own security, focusing on the matrimonial home, and at times that damage can result in a loss of familial security. That is more tangible. Again, not dollars and cents; it is clearly discernible as loss of income, I understand.

The Chair: Thank you very much for your presentation.

Mr B. Brown: Thank you for the opportunity to speak.

The Chair: Did you get a copy? Great.

Mr B. Brown: I appreciate it.

The Chair: Mr Grant, the clerk has distributed copies of your presentation to the committee. We have 15 minutes of committee time. Use it how

you see fit. If there is any time left after your comments we would entertain some questions, interaction and discussion. Please identify yourself and proceed.

1410

DONALD L. GRANT

Mr Grant: I have been practising law for almost 24 years. During that time I have handled many personal injury claims on behalf of plaintiffs. I am not, however, a personal injury lawyer, because my practice is too diversified. Because I do not spend all my time on personal injury cases, I may view Bill 68 from a little different perspective than some of my colleagues.

I accept, for example, the realities of politics. The government has a huge majority and obviously wants to pass this bill. It has already had two readings in the Legislature, and therefore the best that one can hope for from these hearings is that you will identify some parts of the bill that are unfair and improve them.

In some respects, Bill 68 corrects some long-standing deficiencies. There is an increased level of no-fault benefit; an extension of guaranteed weekly benefits to students, retirees and the unemployed; and a quick and inexpensive mechanism for settling disputes over benefit compensation. On the other hand, I do not agree that this act finds the right balance between affordable premiums and appropriate benefits as the government claims it does.

I believe that section 231a, except in those cases where an injured person has died, precludes almost everyone from obtaining compensation, no matter how seriously they have been injured. I believe that the words "caused by continuing injury" in clause 231a(3)(b) make the entire subsection unworkable.

If you will excuse me while I play lawyer here, Black's Law Dictionary defines "injury" as a hurt or damage done to a man's body, such as a cut or bruise, a broken limb or the like. It also says that an injury can mean the consequence or disability that results from the cut or bruise or broken limb.

But because the subsection deals with "permanent serious impairment...caused by continuing injury..." it is the injury—the cut, the bruise or the broken limb—that we are talking about that causes the impairment. The "injury" in that subsection is not the consequence or the disability that results; it is the impairment that is a consequence or the disability that results.

In other words, the impairment must have been caused by a cut or bruise or broken limb that

continues, endures, persists or perseveres. But we all know that cuts, bruises or broken limbs do not continue for ever; they eventually heal. The impairment caused by the injury may continue permanently, but the injury does not.

Getting over the threshold is like handing a pole to a disabled person and asking him to pole-vault a bar placed 25 metres above the world record height. It is just not possible. If that subsection is passed in its present form, nobody will be compensated for injuries under that subsection.

You have already heard that workers will have their wages and benefits cut by their employers who pay more for salary replacement benefits. Self-employed people like myself will have to buy additional disability insurance to protect us in the event of a car accident.

The biggest losers, however, will be people who are not working—students, retirees, housewives and the unemployed—because they cannot buy income protection. Those are the very people to whom this bill extended no-fault benefits. A large group of them will be plunged into poverty because they will not be able to protect themselves against the loss of their ability to earn a living.

I believe that the subsection could be changed to provide as follows:

"(b) permanent serious impairment that prevents the person from engaging in any occupation or employment for which he or she is reasonably suited by education, training or experience or that prevents the person from performing all or substantially all of his or her normal activities."

I believe that wording would be much fairer to victims of injuries and it would only apply to those whose lives are significantly affected by the accident.

As we all know, the impetus for this bill was a dramatic rise in premiums over the last few years. It is not clear if the bill, in its present form, holds down premiums. It is clear, however, that we will lose important benefits that we presently enjoy.

Most of the blame, in my opinion, has been wrongly placed on the law. I think it must be clearly understood that the law is not the problem; the law is adaptable and creative. It generally provides victims of accidents with reasonable and fair compensation. The problem lies with the administration of justice. It takes too long to get to court, there are too many unnecessary procedural delays and they all play

to the advantage of the defendants, the insurance companies.

I believe that we can continue to compensate victims of car accidents and hold costs down by using alternative dispute resolution techniques instead of traditional litigation. Alternative dispute resolution, or ADR, is a bundle of techniques that are used to resolve disputes. The process is much more advanced in the United States than it is here. The aim is to settle disputes in as informal a manner as possible and at as little cost to the parties as possible. The savings in legal costs, prejudgement interest and administration costs would be significant because cases would be resolved much sooner.

Bill 68 introduces mediation and arbitration to resolve disputes over no-fault benefits. The insurance industry already uses a form of ADR in fire insurance cases called appraisal. The variety of ADR techniques is limited only by the imagination of human beings. There is no reason why these techniques cannot be used to settle claims for compensation for pain and suffering and financial loss, and every reason why they should be.

Mr Kormos: Another perspective on the threshold, and it is incredible how just every day there is a new angle that probably was not even considered, in view of the haste with which this legislation was put together: People come before this committee and point out gross shortcomings that leave the government members hiding their mouths with the palms of their hands to stifle the display of amazement that, "My God, this is overlooked." It lends itself to the criticism that it was hastily put together.

You raised a concern, and it has been spoken to earlier, about the fact that there are apparently in the possession of the Minister of Financial Institutions documents and actuarial studies that talk about the impact of this legislation on the profits to be made by the insurance industry. These documents are being kept secret. They have been requested; they have been requested by a number of individuals under freedom of information—denied; they have been requested in the course of this committee—denied. Now the parliamentary assistant tells us we can have them 6 February after the bulk of submissions are over and when we cannot ask participants in the hearing to comment on them, evaluate them and assess them.

It is incredible that the government could have a secret clandestine process going on, hand in hand with its efforts, in our view—you may or may not agree—to advance a piece of legislation

whose net effect is going to generate untold profits for the insurance industry; at the same time, the absence of any commentary by the Ministry of the Attorney General.

Your consideration of the threshold is a freebie. Here the government is getting free commentary; I am not sure it is going to listen. Surely this legislation was run past people in the AG's office to consider issues of constitutionality, because it certainly is an issue—it cannot be dismissed—to consider the real effect of this threshold. Simply to say it is more onerous than Michigan is, clearly, in view of what you have said, not enough. It may be not only more onerous, but worded in such a way that it is an absolute barrier.

The government has a lot of explaining to do in the total scheme of things: the secrecy that has been advanced, the meeting of insurance company executives with the Premier, which certainly was not paralleled by any access to the Premier's office by consumer advocates or victims or persons involved in rehabilitation. It is remarkable that virtually every party to this committee process that has supported the legislation has been the insurance industry.

Almost—I concede almost—universally, when you talk about trade unions, professional organizations, health care professionals, Mr Brown, social workers and victims the position is, the legislation is bad, it should not go through. Professor Glasbeek, who was here earlier, who has a totally different perspective, who believes in a no-fault system and points out that this is not no-fault by any stretch of the imagination and who appears to believe—he did not state this, but I am prepared to draw the inference that he appeared to advocate a public-run one like the one run by the Liberal party in Quebec. It runs a public system there. Even he, who had a distinctively different perspective than many of the other critics of this legislation, had no hesitation in pointing out that this was so horribly bad and served the interests so clearly of the auto insurance industry and nobody else, it should be abandoned and to do anything less would—and these are my words—be shameful. But thanks for coming today.

1420

Mr J. B. Nixon: Mr Grant, thank you very much for coming before the committee. I have a question for you. You focus on redefining the threshold. Do you agree with the idea of a threshold, the concept?

Mr Grant: As I said at the outset, the government has a majority. They are going to

ram this bill through whether we like it or we do not like it. I am here to try to make it as palatable as possible. I think that my definition addresses the issue. One of the things that appears to be a concern of the government is the premiums. I think that it has sacrificed benefits for the sake of lowering premiums. I do not know that it has any guarantees. I saw in the paper this morning that Mr Elston says, "Well, it's going to be held to eight per cent, except if you have a big car or if you have this thing or that thing, or if you have a bad record, you may go up to 40 or 50 per cent." So I do not necessarily agree with the threshold, but in the circumstances I think that I can serve the committee better by coming here and suggesting a workable threshold rather than just saying I do not agree with threshold.

Mr J. B. Nixon: I appreciate your coming and I appreciate your pointing out some of what you think are deficiencies in the existing threshold. If the existing system is to be preferred, what do you say about the 56 per cent of people who are uncompensated, according to the Ontario Law Reform Commission, or the 30 per cent who are uncompensated, according to other evidence we have had, under the existing system?

Mr Grant: What do you mean, "uncompensated?" Do you mean those who are wrongdoers?

Mr J. B. Nixon: Victims of traffic accidents who, for one reason or another, are not compensated for their loss.

Mr Grant: I think part of the problem is the time and the money it takes to get to court. I think that if there were an alternative dispute resolution system where the claims could be adjudicated more easily, then there would be more universal compensation. I do not know where that figure comes from or how it is arrived at.

Mr J. B. Nixon: The 56 per cent comes from the Ontario Law Reform Commission.

Mr Grant: There are people who are not compensated because they are at fault or they just do not pursue it, I do not know why. Certainly the insurance companies are very resistant to compensating people, or if somebody has a real injury they want to get him a few bucks fast so they will not—I had somebody call me last week who had an injury and three months after his injury he had an epileptic fit. But in the meantime the insurance company prevailed upon him to accept an offer without consulting with his lawyer, because it said: "The offer is here. It's going at six o'clock tonight. You either accept it now or it is gone." He said, "I want to speak to my lawyer." "The offer will not be there." So he

took the offer. A month later he had an epileptic fit. He was an ambulance driver and cannot get a licence to drive an ambulance while he is on medication. Even if he is off medication, he may never drive an ambulance again. So that is somebody who had compensation, but not adequate compensation.

Mr Runciman: On a point of clarification, Mr Chairman: Since I did not take up any time, I would like to take a minute on this, and that is the comment that was made by the parliamentary assistant earlier today about the 23 studies that are going to be made available to the committee on 6 February. I was just talking to my colleague in the New Democratic Party and I guess we both have some concern about the timing of that, considerable concern that, in some way, whether or not the subcommittee has to get together, there should at least be a day allocated, perhaps under the clause-by-clause week, I am not sure, at least some time to deal with the staff from the ministry to review those reports and perhaps time allocated to call witnesses who may have other views with respect to their analysis of the conclusions of the report.

So I think it is important that we have some time to deal with this. Perhaps it is something that should fall within the bailiwick of the subcommittee to come back with a recommendation, but I do not think we should simply have these reports dropped on our desks with really no time to look at them, no time to question the ministry staff who dealt with them and to have some critical scrutiny on this.

The Chair: Before I allow the parliamentary assistant to answer, I would just like to propose that we hear the next two deputations and then come back and deal with this in some shape or form before we adjourn today. Can we do that?

Mr Trest, would you like to come forward at this time. For the next 15 minutes the committee time is yours, sir.

ILYA TREST

Mr Trest: I represent the opinion and propositions of the victim. I will read to you.

There is no right to sue under the present system; \$300-million terror of the victims by the insurance companies; their lawyers and their doctors: On 27 February 1985, at the bus stop on my way to work, which I did for 12 years supporting my wife, to whom I have been married since 1962, and my two sons, presently 16 and 13 years old, I was hit by a car and survived by a miracle. I had disability, life, medical and drug insurance from my company

and my income was \$318 a week for a family of four.

I received a physical injury and from 17 June 1985 I became a psychiatric patient as a result of it and have been seen by my psychiatrist, Dr Herman Gelber, 72 times.

I got only 10 days to start the action against the municipality because it happened in poor weather and I did not have the money or health to go to court. Therefore, I became a hostage of the present system, including the no-fault legal system.

The owner of the car was represented by the law firm of Mr Hemmerick, who together with me as *amicus curiae* on 27 April 1978 argued the appeal of the case of my late father-in-law where the question of law was raised and my late father-in-law, late mother-in-law and myself were sent from court to court to receive the answer but never got one. Also, later the Immigration Act was changed. I am providing copies of the judgement of the Court of Appeal, dated 27 April 1978, judgement of Madam Justice Van Camp dated 11 February 1975 and one of the stories in the Toronto Star dated 20 June 1978.

My fight in the United States resulted in the cut of grain embargo against the Soviet Union and I am providing you with a copy of a letter from Ronald Reagan dated 8 September 1980.

On 8 April 1986, my wife and I got the examination for discovery by Mr Jamieson from the law firm of Mr Hemmerick. Although he asked us about 400 questions, no questions were asked about my health before 27 February 1985 or my involvement with the court.

On 5 November 1987, Mr Adair, legal partner of Mr Hemmerick and Mr Jamieson swore an affidavit which states that Dr Hoffman from Mount Sinai Hospital and Dr Jeffries from the Clarke Institute agreed to examine me at the same time. Dr Hoffman, who never saw me in my life, asked for a psychiatrist as interpreter. On 18 November 1987, Master Sedgwick dismissed as unusual the defence motion to have me examined by the two above-named doctors and ordered me to be examined only by Dr Jeffries. I am providing copies of the handwritten order of Master Sedgwick from the Supreme Court of Ontario and pages 1 and 5 of the affidavit of Mr Adair.

On 13 January 1988, I saw Dr Jeffries at the Clarke Institute for about 40 minutes and again no questions about my health and involvement with the courts before 27 February 1985 were raised. On 27 February 1989, two years and 11

months after 27 February 1985, Mr Adair made the first offer, which was sent to me by my lawyer together with Dr Jeffries's report, dated 18 January 1988, which report had a shocking effect on me.

On 10 February 1988, the pretrial conference was held and the late Mr Justice Bowlby estimated the length of the trial at five weeks. Also, the driver of the car admitted his liability in the statement of defence and the affidavit of Mr Adair states that the driver of the car does not seriously dispute the fact of my present health condition. I am providing you a copy of the judge's record.

On 27 January 1988, contrary to the order, Mr Adair sent a letter to Mr Hoffman, asking him to review the report of Dr Jeffries who only a few months before it worked together at Clarke and listed in telephone book. The letter came as another shock to me. In paragraph 4, Dr Hoffman admitted the negative effect on my health of the court. I am providing a copy of the letter of Dr Hoffman, dated 2 March 1988.

My health deteriorated to a point that it was suicidal for me to go to court on a trial where the decision could be made by the jury under the question of my nationality or other provocative questions by the defence, and I did not have money to pay for a five weeks' trial. The trial that should be set on 6 October 1988 was adjourned to 27 October 1988.

I was blackmailed to accept the second offer after 6 October 1988 in a portion of my claim. Also, it was more than one month from the time when I signed the release to the time when I received the cheque. The insurance company refused to pay for it.

1430

In his letter to the college dated 3 March 1988, Dr Jeffries stated, "It is very important in respect to all these complaints to point out that I never had the responsibility for Mr Trest as a physician." I want to read it again, "It is very important in respect to all these complaints to point out that I never had the responsibility for Mr Trest as a physician." I will provide you with a copy of the letter of Dr Jeffries dated 3 March 1989.

On the advice of the same Dr Jeffries as attending physician on 27 March 1989, the Clarke Institute made an application to withhold all my clinical records, and the definition of "attending physician" is given in clause 1(a) in the Mental Health Act. I am providing a copy of this document.

Conclusion: At the present time, the right to sue practically does not exist for the majority of

the victims as 90 per cent of the cases settled out of court, 70 per cent of victims do not receive a single penny in pain and suffering and there are only a few lucky victims whom the jury chosen by the insurance company awarded a large amount of money. The price for the lucky few is astronomical: \$300 million to the doctors and the lawyers of the insurance companies and \$500 million to the lawyers of the victims. On top of it, even in my case, the offer included the legal costs on party-to-party basis. Taken into account, the legal costs in 1988 could be estimated at about \$1 billion for the system called, by the lawyers, Russian roulette. Therefore, the idea of the government of Ontario to bring in the no-fault system just legalizes the present situation, and no system is perfect.

Proposed no-fault system; violation of section 15 of the Charter of Rights; robbery of the victims in the amount of \$1 billion by the insurance companies: I believe that the opponents already covered these questions. Therefore, I will limit it only to my family.

If the proposed system had been in place 27 February 1985, the insurance company would have had to pay me only \$1,000 for being disabled for the rest of my life.

If the proposed no-fault system would be accepted and I and my dog would be injured by a car at the bus stop and receive a physical injury for three years, the insurance company would pay me nothing but I would have the right to recover for the damage to the health of my dog.

If my 16-year-old son who pays \$2,600 a year insurance without coverage for collision of a 1984 car will be injured for three years, he would not receive a single penny for pain and suffering, and \$185 less than the maximum amount allowed to pain and suffering by the Supreme Court of Canada divided by 20 years and 365 days, which is about \$30 a day, and \$185 a week is lower than the minimum wage in Ontario, which is \$200.

If my 16-year-old son will be partially disabled for the rest of his life, he would not receive one single penny for it. If my 16-year-old son were to receive a serious physical injury, I would have to become a millionaire in order to pay \$100,000 in legal costs to both sides in order to go to court to find out that my son does not have the right to sue after spending many years in court.

If my 16-year-old son becomes mentally ill for the rest of his life from receiving a physical injury, he would not have the right to sue. It was Adolf Hitler who, with the help of the doctors, killed psychiatric patients in Germany before

killing millions of Jews, communists, homosexuals, gypsies, which was a medical opinion.

My 13-year-old son would be in an even worse position, because in the case of his inability to go to school up to the age of 16 and entering the workforce three years later, he would not be paid one single penny for it. In fact, a disabled person is able to receive now about the same amount of money from family benefits.

I want to bring just one example outside of my family. A victim at minimum wage in Ontario, \$200 a week, if he has the same kind of coverage I have from the company, will receive from the insurance company only \$30 a week, 15 times less than \$450.

It should be noted that the proposed definition of disability is totally changed by adding the word "substantial," and the doctors of the insurance companies would only have to write "nonsubstantial."

My propositions under the no-fault system:

First, the word "substantial" regarding weekly benefits should be removed. And take into account the position of Dr Jeffries, the proposed benefit of the doubt given to the insured whether the supplementary medical or rehabilitation benefits should be paid should be extended to any procedures of the proposed law, which includes the weekly benefits.

Second, the payments of \$30 a day for pain and suffering should be introduced and added to the weekly benefits, if any. It should be paid for seven days a week, \$210.

Third, the present entitlement for loss of wages should be preserved in this new law: (a) 100 per cent up to \$450 a week, including the loss of future wages; (b) employed victims should be paid for partial disability for any period of time from the income \$450 or less; (c) students under age 16 should be paid on the level of minimum wage in Ontario for each lost day of school; (d) students over 16 should be paid on the level of average wage of the worker in Ontario for each lost day of school; (e) the partial disability by the student should be paid in proportion of disability as referred to in (c) and (d).

Fourth, the proposed payments of \$185 to retirees which include senior citizens and the disabled should be eliminated.

Fifth, the payments by the private companies or the Canada pension plan received by the disabled should cover the loss of income above \$450 or to bring the income to the level of poverty with the remainder deducted by the insurance company paying for the accident.

Sixth, a special fund should be introduced to cover the expenses for the supplementary medical care and rehabilitation and long-term care above \$1-million limit, which should be collected in percentage point of the payments of the disabled by the insurance companies and paid to the disabled in case of continuing need.

Seventh, any plan level should be increased each 1 January with the level of inflation, and the payments to the disabled should be increased every day here in the same manner. Says Catharine McGregor of the Insurance Bureau of Canada, "Dollars that currently go to prove fault should be kept in place in the victims' hands."

According to a publication of the same bureau, *Car Insurance: Myths vs Facts*, the estimated cost in 1989 above \$100 million is comparable to the savings in legal costs, about \$800 million a year under the full no-fault system which I am proposing.

In any circumstances—and also it violated section 15 of the Charter of Rights—Bill 68 should be amended to leave the rights to sue to any victims who receive permanent injury to their health for more than three years for an indefinite period of time.

The Chair: Thank you very much for your presentation. We appreciate it.

Mr Agnew, the clerk is distributing copies of your presentation. Please have a seat. The next 15 minutes of the committee time is yours, sir.

Mr Agnew: I must apologize. There was a lady in the chair when I was here last.

Mr Ferraro: Much better looking than this chairman, too.

The Chair: I rule that out of order, Mr Ferraro. Please continue.

ROBERT AGNEW

Mr Agnew: I am a senior citizen and, you can see, by many years. I am an honorary member of the Law Society of Upper Canada, just because I have been a member for 50 years. I retired in 1976 after spending over 35 years in the casualty insurance field. I was head of the claims department of one of the large casualty insurance companies with offices across Canada. I travelled across this country visiting those offices and dealing with claims problems which were mostly in the automobile field.

I realize that Mr Peterson promised to reduce premiums. Unfortunately, the insurance industry has conned the government into a scheme that will most certainly reduce claims.

After spending all those years looking at the trees, I have had over 10 years now to step back

and look at the forest. The insurance industry and the legal profession have brought this situation on themselves with some assistance from the government.

Take property damage claims. In the 1940s and 1950s, when a claim was reported, an adjuster went out and looked at the damaged vehicle. He checked the damage and obtained an estimate on repairs. Over the years the insured, in certain cases, would request that the car be repaired at the dealer's garage, where he bought it. This estimate would be substantially higher.

Pressure was then applied to the claims department by the agent and so forth, the philosophy being that, if you, say, pay \$500 more on this claim, that is clearly charged in the loss column and the expense department is cut. This deteriorated to the point where now most companies save some expense by not looking at the car, just requesting two estimates, accepting the lower one and paying that. No adjuster's fees to pay; therefore, you have reduced expenses.

You might have heard about the breaking point. At the end of the financial year, the company figures out its loss ratio, say 80 cents, then its expenses, say 20 cents on the dollar. That is the breaking point. If either can be reduced, we are in the black. On the other hand, if either goes up, say two cents, we are in the red. If losses are up, it is easy to say premiums have to be raised. If expenses are up, we have to do something about it internally. In other words, that reflects on the industry and it cannot come to the government and say, "We want an extra premium just for our expenses."

1440

On the personal injury side, no one has done anything to control the amount of damages. Even the government has added to it. For the first time, the Family Law Reform Act allowed a grandparent to collect damages for pain and suffering when a grandchild was injured, maybe five miles away. This type of thing has been happening over the years.

The lawyers did not realize what was happening. The famous plaintiff's attorney from California was brought to Toronto to address the lawyers and explain to them how to increase damages. Everything has been focused in the way of increasing damages and nobody has attempted to put a handle on it.

Do not forget, you have been told that only a very small percentage of claims go to court. But if you are in the claims department, the amount of those judgements is thrown right back at you. If someone got, say, \$5,000 for a broken arm, that

is up from, say, \$4,000 on the last judgement, so you had better pay up.

I am talking now as the claims superintendent, the fellow on the defence, and the lawyer just simply tells me: "Look, the court awarded \$5,000 on that limb, you pay me \$5,000 and \$2,000 costs or else," and I say, "That's way out of line." He says: "Okay, then I'll see you in court. That'll be a year from now, and you're going to pay interest, so there's no concern about mine. I'll be in a nicer position to charge my client a larger fee because I have had it in my desk for another year."

These are the things that have been going on, innocently, if you want to put it that way, with nobody taking any steps to control it in any way. Over the years, these amounts have been escalating with no concern. Only the Supreme Court of Canada has said, "No award for pain and suffering should exceed \$100,000." That was one of the first steps in that direction. Nothing has been done to restrict the quantum of damages.

With no-fault, you have played right into the hands of the insurance industry. As far as I can see, the government has accomplished the goal of reducing premiums at the expense of its own pocketbook, as well as a loss to the motoring public. Words such as "serious" and "permanent" are hard to define and they will only create a lot of litigation, like the Charter of Rights has. You have heard other comments about that. I do not want to go into "serious" and "permanent," but you can see what the problems are.

I cannot see why, with all the other changes to reduce accidents, the injured party should not have the option of retaining his common-law rights or accepting the no-fault benefits. That gets all the way from the litigation over to the Charter of Rights and that type of thing, because he then has a choice.

If the government and the insurers could only get together and make some changes in the common law, this could be accomplished with the reduction of premiums under the new system. I would say that under Bill 68 no-fault losses will be reduced, say, 25 per cent.

There is no reason the government should subsidize the insurance industry with the millions of dollars OHIP has paid on behalf of senior citizens in order to reduce premiums. As I understand it, the government is not going to subrogate losses paid for senior citizens, for example.

I just had a couple of remarks. I have said to give the person the option of having tort liability.

To do this, there are easy ways of changing—I should not say easy, but there are ways of changing the quantum of damages. For example, you are going to legislate pain and suffering right out. The Supreme Court has set it at \$100,000. It could be legislated right out under the tort system, and in doing that, I think somebody indicated that would take about five per cent off the claims right off the top.

There are other ways of increasing the speed of settlements. You have heard that. That is the fault of the court system.

I do not know whether you have heard here that interest is charged on accidents from the date of the accident. That has really reacted against the claim settlement, because what happens is that the lawyer says, "Look, fellow, you're paying me X per cent for every day this claim isn't settled, and it doesn't make any difference to me whether you settle it today or a year from now. You're going to have to carry it on your books, you're going to have a loss against it, you've got everything to handle and look after this for a whole year. I just put the file away, and when the court wants to hear it, that's okay with me. But you're going to pay more a year from now than you are today." There is no way of putting a gun to his head and saying, "Look, we want to get this thing settled today." I can tell you from the defendant's standpoint, he wants to get it settled. It is the plaintiff's lawyers who wish to kick it around.

You have heard enough about serious and permanent injuries, and I can see that that could be a great cause of litigation.

You are taking steps to control property damage. I have indicated why it has gotten out of hand; nobody has been checking into these damages.

I am speaking from personal experience. I have had two minor accidents which were not my fault. All I had to do was call up and I was simply told over the phone, "Get two estimates and we'll pay the lower bill." That is all there is to it, so there is absolutely no control. I did this intentionally as an ex-claims man to see what would actually happen. I went along with the game just to see it.

You have given enough concern to the insurance industry under that aspect that it could easily control losses by some hundreds or thousands of dollars, and insurance premiums are not as bad as they have been painted. You have been hearing all of the cases of exceptional ones.

I am paying \$600 a year, and with the costs that have gone up over these years with cars—there was a phone-in program the other day because of some lady complaining about her insurance premium going up to \$2,000. I was amazed to see that in about four or five calls that I heard after that, the people were not complaining about their insurance premiums at all. One man was complaining about his girlfriend having to pay \$450 semiannually, which I know nothing more about than that, but not knowing all the circumstances, with the costs going up on these cars, as somebody else has indicated, I cannot see—

I guess my main point is, and I would be glad to discuss it, but I do not know that you are going to give me the time—

The Chair: I have got a couple of people who are interested in asking questions. Maybe I will go with Mr Runciman first. Is that all right?

Mr Philip: I just wanted to look at the chart and perhaps ask some things about that.

Mr Runciman: Mr Agnew, you worked for an insurance company for a number of years. You said you were the head of the casualty insurance field. What was the last year you worked in that?

Mr Agnew: It was 1976. That is when I was 65.

Mr Runciman: Right, it does say here you retired during 1976. What was the financial experience of the company during the last two or three years you were with it? They were making money in the auto field, there was no difficulty?

Mr Agnew: You have got to differentiate. I heard Dominion of Canada General Insurance this morning. I think they were honest or frank enough to say that on their automobile losses they had taken into consideration their interest, the income on their investments. Normally, the company looks at it two ways. They look at the dollars they paid on the actual premiums collected and then they have a bonus of a large portfolio of investments and they have to eat into that to keep into the black.

But as far as I was concerned, from the actual dollars and cents collected, they were just on the borderline. They were in the red the odd year and the pressure was put on us, "If you can reduce your expenses two points, we're going to be in the black." It was nip and tuck on that 100 cents on the dollar over the last years that I was in business.

Mr Runciman: The expenses being limited, you are talking about dealing with claims, not

internal efficiencies, salary freezes; those kinds of things.

Mr Agnew: When I say "expenses," that is the agent's commission, the operating expenses for the whole office, all of the office expenses including the claims department.

1450

Mr Runciman: I think you were here the other day when we had the president of the United Senior Citizens, I think it is called, give testimony, which I thought was somewhat tainted by the presence of an insurance company executive on his right arm, but in any event, you are a senior yourself. I wonder, having heard that testimony, if you would like to make any comment on it.

Mr Agnew: As I see it, under this system, if I am involved in a serious accident, I have OHIP paying all of my hospital expenses, all of my medical expenses. I have been in the hospital and had my heart in and out, so I know it is a wonderful thing, but thanks to the government, all my expenses are being paid.

If I understand this bill correctly, that is going to be a windfall to the insurance industry, because here again; that is another thing. If you put the tort system back in for these lower people and you give the insurers the benefit of not subrogating OHIP—I am the guy who represented the insurance industry with Mr Justice Haines on behalf of the lawyers, who worked out the subrogation between the insurers and OHIP, and that has been working satisfactorily, last I heard, and OHIP was getting its amounts paid back out of any settlement that was made. But as I understand it, that is now being abolished.

If the insurance industry is getting that windfall and if you abolish pain and suffering and two or three things like that, and you do something about the court system, about getting these things settled—I mean, if lawyers were told that their fees were going to be reduced five per cent per month for every time they did not get it settled—there are things that can be done within the system, with different ways of bringing about a reduction in the claims under the tort system.

Mr Philip: I guess my concern about one of your comments is that you seem to imply that if a major effort were made somehow to cut down on property damage claims, you would have a substantial impact. When I look at Osborne's figures for 1986 comparing bodily injury claims in 1981 dollars to property damage claims, I see that the ratio is something like six to two, or one to three, in favour of the bodily injury claims.

Notwithstanding that, you are suggesting that some economies can be achieved by being more efficient, if you want, in the way in which claims are settled for property damage. Are you suggesting that there is somehow dishonesty out there, and if so, if you have a claims adjuster on every piddling little claim, is the policing of the system going to cost more than the actual settlement?

Mr Agnew: It may be. Off the top of my head, that is hard for me to say, but let me say this: There is a deductible on a windshield loss, right? You can go out today and look at several of the garages that replace windshields and they will say, "Your deductible will be absorbed if you bring that car in to us." They are openly, brazenly putting that on their ads or on their windows that your \$50 or \$100 deductible will be absorbed if you bring the job in to them. Who is absorbing it? There are all sorts of little things like this that can be addressed if somebody wanted to put them in, and the people are in a mood now to be concerned about some of these things, which nobody seemed to have taken any concern about over these last years.

Mr Philip: I guess I have some faith that a lot of these dealers out there are honest, although I have heard some of the stories you are talking about. I wonder, is there a need for some kind of special legislative function in this that would deal with conflict of interest, that you are not allowed to give gifts to claims adjusters if you are operating a body shop? Are there any other kinds of things that you think should be done that are wrong in the field? I am not by any means suggesting that all people are doing it. There are a lot of honest people working in that field, including some relatives of mine, so I want to be able to go home.

Interjection: There is conflict.

Mr Philip: Yes, there is the conflict. Are you suggesting that there is something legislatively that could be done that would actually reduce costs?

Mr Agnew: I would have to think about that. Something certainly can be done to control it. I admit that I have gone into a garage to look at a car and they told me, "Well, come on into the back room with me," just in those words. Because that is the first time I had been in that garage and so I was told in a nice way, "Look, any business you bring in here, you will get 10 per cent on it." That type of thing is going on. That is a bit on the fraudulent side.

Mr Philip: That is even better than a bottle of scotch at Christmas.

The Chair: Mr Nixon, three minutes.

Mr Agnew: I have had quite a few bottles of scotch for Christmas.

Mr Philip: And you took them?

Mr Kormos: These guys over here know all about that.

Mr J. B. Nixon: Some people say that insurance companies are not to be trusted, that they are gougers and will refuse to pay any claims. Is that your view based on your experience in the industry?

Mr Agnew: No. I honestly cannot say. I am afraid the shoe has been on the other foot mostly, particularly when the pressure is put on by the agent or the company and somebody like that, a large broker, what do you care about this. This goes in the loss column. Then you have it off your desk. You do not have to worry about it any more.

I am sorry to have to talk this way but I am being—

Mr J. B. Nixon: I appreciate your candour very much.

The Chair: Thank you for your brief as well as your comments. We very much appreciate it. Before we adjourn we could entertain some discussion around Mr Runciman's request. I would ask the parliamentary assistant to speak to the time frame or the time line around the release of the documents.

Mr Ferraro: I was advised to notify the committee that, indeed—without being totally repetitive but I guess I am going to be—the morning of 6 February hopefully, whatever time the committee wants, reports and studies will be released to the committee and they are extensive, quite frankly, and staff will be there to review those reports and studies with the committee. The only thing I can say, quite frankly, is the rest of it is up to the committee vis-à-vis the business of the committee.

The Chair: I have Mr Kormos, Mr Philip and Mr Runciman.

Mr Kormos: If I might just ask the parliamentary assistant, surely, studies and documentation was done before the bill was drafted. If that was the case, then these documents would be prepared. I presume, then, you are talking about new ones in addition to pre-existing ones. Is the delay so that they can be doctored up before they are exposed to the public, so they can be cleaned

up and sanitized to fall in with the government line?

Mr Ferraro: I am not sure he wants me to respond to that but suffice it to say, no, we are not doctoring anything up.

Mr Kormos: Not you personally.

Mr Ferraro: The only thing I can say is that when we got into government there were no paper shredders and indeed there were no black magic markers.

Mr Runciman: I am glad you finally said all that.

Mr Ferraro: Having said all that, and I deserve it for editorializing in my comments, the only thing I can say is that the government, quite frankly, is in the process of finalizing any and all proposed amendments and, indeed, some different aspects of the regulations which, of course, accompany the statutes. In fairness to us, part and parcel of that determination is a study of reports commissioned and at our disposal.

I can certainly ask the ministry if indeed there are a number of reports that we can release in advance but I am not sure of the response because they may want to look at it in a comprehensive way.

Having said all that, at the very least, on 6 February, you will be inundated with more information than I think you probably want. And I regret it is so late.

Mr Kormos: Seventeen minutes of blank tape.

Mr Philip: I guess I am somewhat puzzled because I have been on committees around here for some 15 years and the normal procedure—and I have served in this House under two separate governments—is that a government prepares its research, prepares some white papers, if you want, based on the research, sends it out and then, based on that research, drafts legislation.

I find it hard to understand how a committee that is going to look at a bill has not had that research that is the rationale for that legislation supplied to the committee's researcher so that he or she would have time to prepare the committee and brief the committee on the research that is there, and so that comments can be made and questions asked of the witnesses based on that research.

1500

I ask you, why was that research not provided? How many of the research papers are there? How many are not in completed form? And why can we not be supplied with those that are in completed form at the present time? Can you give

us a list, even, today of the papers that are already prepared and that would have had to be prepared before the legislation was first introduced?

Mr Kormos: Cover up.

Mr Ferraro: The only response, quite frankly, is no, I cannot give him a list. I can tell you that they are in excess, I believe—Miss Parrish could perhaps correct me—of 20 reports and/or actuarial studies that will be released to the committee and that, indeed, it is my understanding that much of the information—I cannot say what degree—has already been discussed vis-à-vis the Ontario Automobile Insurance Board hearings and in some respects will be somewhat repetitive.

Mr Philip: If there are 20 reports, why can those reports not be tabled today? We are not sitting next week. It would give our researcher a week's opportunity, as well as members of the committee, to examine those reports and therefore our hearings the following week might be a lot more meaningful because we could ask questions of our witnesses based on the contents of those reports.

Mr Kormos: What gives?

Mr Ferraro: The response, again, is that indeed some of the reports have just recently come in to the possession of the government and our analysis for the final draft bill for third reading, which will be debated, I am sure, both here and indeed in the House—some determinations vis-à-vis the regulations are still forthcoming and have a direct bearing to those reports, many of which we just recently received.

Mr Kormos: That is okay.

Mr Ferraro: I have stated quite clearly that indeed the reports will be made available 6 February and I hereby undertake, as I indicated earlier, to request, if indeed possible, bearing in mind I am just an Indian and not the chief that there are reasons vis-à-vis the 6 February date—

Mr Kormos: Sure, you are going to doctor them up.

Mr Ferraro: —pertinent to the government's preparation and if indeed we can release some prior, we will do so.

Mr Kormos: You can edit them and doctor them up.

Mr Philip: Why would the government have any objection, if the research is in fact empirical research and will stand on its own; whether it is deciding on amendments based on that research or not; why would it not table it with the committee so that the committee may have an

opportunity to look at it; so that members of the public who may be appearing the week after next might have an opportunity to analyse it; and, therefore, the government who may be considering amendments would have an opportunity to base its amendments not just on the research that it has commissioned but also on public comments and on parliamentary comment on that research?

Unless they are trying to hide something, one would think that an open government would table that research and get as much input as possible. Instead, getting it after the fact puts a number of our witnesses at grave disadvantage. It means, quite frankly, that as a member of the committee I am likely to want, after I have an opportunity to see this research, to recall a good many of the witnesses to ask for their comment on that research.

I would think that would be a tremendous waste of the resources of this committee; a tremendous imposition on our witnesses who have appeared and who may want to comment on the research and who may even change their mind on some of the positions they may have taken before the committee, based on the research.

What earthly reason would you, the Liberal government, have for not tabling it now so that we can have the maximum amount of input from some of the very distinguished people who are scheduled as witnesses?

Mr Kormos: You screwed up badly on this one.

The Chair: I am not going to allow Mr Ferraro to respond other than his previous response which was he would take that request back to the "powers that be." He is not the minister. He will undertake to get a response for us.

Mr Runciman: I find some of the comments made by the parliamentary assistant disturbing, to say the least.

Mr Kormos: Scary.

Mr Runciman: This legislation was tabled when? In November 1989? Maybe October?

Clerk of the Committee: 23 October 1989.

Mr Ferraro: 23 October, yes, first reading.

Mr Runciman: 23 October. The parliamentary assistant is telling us today that they were still getting reports in. He is talking about regulations, but I am concerned. I think the point has been made by opposition members that the government jumped into this thing without really close scrutiny.

Perhaps the point that has to be emphasized here is, the minister in his opening statement, and

government members subsequently, have taken some very strong positions and criticism of witnesses appearing before us because they do not have the facts, they cannot justify the positions they are taking, etc. Now to find out that the government is still in the process of doing studies on this to try to analyse its impact is, as I said, quite disturbing.

I would hope, too, that the parliamentary assistant will make the case that any studies that have been done, and have been done for some time, will be made available as quickly as possible. I would also like to get some clarification; he mentioned the figure of 20. I know the press reports have indicated about 23 reports that have not been made available. Is he suggesting that some are still going to be held back? If that is the case, I certainly want to go on the record as being strongly opposed to any of those studies being held from the purview of this committee.

Mr Ferraro: Mr Chairman, Ms Parrish was good enough to clarify for me. There is a distinction that has to be made, I think, between reports and documents. A number of the reports also have some accompanying documents. In actual fact, you are going to get a substantive number, probably in excess of 20, 23, to say the least.

When I indicated that the government was getting reports, let me assure you, Mr Chairman, and the committee that indeed the substantive portions, the heart and soul, if you will, of the legislation was thoroughly analysed and indeed everything, all the documents, all the OAIB hearings and all the rest of it were considered. Some additional information was requested vis-à-vis specific areas dealing with, if you will, the regulations. For example, what type of optional benefits should we have insurance companies provide to the public? But let me assure you that a full and complete study to the best of our ability, and I appreciate one can question that, was undertaken vis-à-vis the heart and soul.

Mr Runciman: A couple of final comments, Mr Chairman. I just want to re-emphasize that if reports can be made available right now and as soon as possible, I am going to lend support to my colleagues. I do not have a schedule in front of me, but we are not meeting next week—

The Chair: That is correct.

Mr Runciman: —and we are not coming back from sittings until—

The Chair: We are back on 5 February in Windsor, 6 February in Toronto, 7 February in

Ottawa and 8 February in Toronto. Then there is the following week that is currently scheduled for clause-by-clause, subject to the committee's direction after consideration.

Mr Runciman: I guess I am just concerned about all of the timing here—if there was an opportunity for the subcommittee to meet at some point, and I think the deputy minister's presence would be helpful. I personally have some reservations about having these things dropped in our lap on 6 February, and having staff here; and we have this pile of documents and the staff telling us what they are all about. I do not think that is going to be of any benefit to us at all.

Mr Ferraro: Just on that, and I share that sensitivity, quite frankly. It is the intent—if the committee wants the staff to come back on a subsequent date, obviously it can be done, mindful of the time constraints unfortunately.

Mr Runciman: I would like to suggest perhaps on Sunday night the subcommittee get together in Windsor with the deputy or someone from staff to be present at that meeting so that we can discuss this whole exercise.

The Chair: Can I propose a process—I have 10 after three in the afternoon—that the parliamentary assistant go back and try to contact the powers that be? If they are not readily available, find out what, if any, documents can be released prior to 6 February; in fact, if all of them can be released. Then he would notify the clerk of that and the clerk in turn would notify all three parties and that, if documents are released, then everyone has all next week to take a look at them.

I support Mr Runciman's proposal in terms of having someone from the Ministry of Financial Institutions in Windsor on Sunday night, be it the deputy minister or whoever, to talk about some of the documents. We can even further determine at that Sunday night meeting whether we want—currently they are scheduled to come in from 8:30 till 10 o'clock on the Tuesday. If we feel that is inappropriate and will not help us in our deliberations, we may want to call them back subsequent to the public hearings being finished. Can I suggest that as a process?

1510

Mr Philip: I have a motion that might make that clearer, Mr Chairman.

The Chair: Okay.

Mr Philip: If you can help me with some of the wording.

I move that the ministry supply to the clerk of the committee for immediate distribution all studies that have been completed and a list of all

ongoing studies not yet completed with a summary of the objectives of those uncompleted studies;

Furthermore, that the subcommittee be contacted by the clerk on receipt not later than 29 January and that the subcommittee then decide whether or not it is necessary for them to meet, either by telephone or in person, to decide what action should be recommended to the committee.

Is that understood? Basically what we want to know is what studies have been completed. The ones that have been completed we want tabled with the clerk by Monday. For those that are ongoing, we want at least a summary of what they are and what their objectives are.

The Chair: You are making a recommendation, in terms of a process, that at that time on Monday the subcommittee would meet or—

Mr Philip: That the subcommittee be contacted by the clerk and at that time a decision will be taken as to whether or not it is necessary for them to meet in person or by telephone.

The Chair: It is moved by Mr Philip. I have Mr McClelland and Mr Nixon.

Mr McClelland: It is difficult to respond in total. I tried to listen carefully to the proposed motion by my colleague Mr Philip. I am content to rely on the undertaking of the parliamentary assistant. I think, if I heard correctly the language of the motion proposed by Mr Philip, that he is asking the committee to compel those documents. I need not get into a long dissertation about the responsibilities and the privilege of ministers and the documents that they may or may not have in their possession. We may not go into that.

Each and every one of us here understands that. We can have all the political rhetoric and the jousting that we want, but that is the reality. Let's deal with the reality. Mr Ferraro has given a very firm undertaking. I am confident in his integrity. I think that is sufficient. I am satisfied with that. Accordingly, as I understood it and heard it, I will be voting against that motion of my colleague Mr Philip.

Mr J. B. Nixon: I have nothing further to say other than that we will not be supporting the motion.

The Chair: Do you have a copy of the motion?

Mr Philip: I am just writing it down, Mr Chairman, but I can repeat it. I think maybe the clerk and our researcher can take it down.

I move that the ministry supply by four o'clock on 29 January to the clerk of this committee for

immediate distribution all studies completed related to Bill 68;

That it further supply a list of all ongoing studies not yet completed with a summary of the objectives of these uncompleted studies;

That the clerk contact by 4 pm on 30 January all members of the subcommittee and that at that time the subcommittee will decide what further action should be taken.

Mr Kormos: I have no qualms about Mr Ferraro doing his very, very best. Unfortunately, the minister has not seen fit to participate in these committee hearings other than when he came here the first day to launch his barrage. The motion simply gives this committee an opportunity to look at secret documents that the government has not seen fit to share until now. The presumption is that the government bases its legislation and its regulations in large part on these documents.

They should be able to withstand the test of scrutiny. If they cannot—I mean there is much to be said by the government not supporting this particular motion. It makes one all the more suspicious about the reason for the clandestine conduct of the government in this regard. It makes one all the more suspicious about the real relationship between the insurance industry and this legislation. The process has become all the more insidious as a result of the government members reinforcing the secrecy, the clandestinity, the surreptitiousness. There are deals being made here behind closed doors and I would like to know ultimately what the insurance industry has on the government that the government is succumbing to each and every one of its demands.

Mr McClelland: At the risk of adding some measure of credibility or substance to the discourse of my friend the member for Welland-Thorold (Mr Kormos), simply let me say that it is because I have an opposite view of people, my colleagues both in government and in opposition. Because of that, I do not take a view of people, mankind and womankind generally, of machiavellian, nefarious conduct. Having said that, I will respond and simply say that the undertaking has been very clear and very carefully made. Certainly my colleague Mr Runciman has been in the position of government and sitting in a minister's office and he knows exactly what we are talking about. I have said that and I will leave it at that. I will be voting against the motion and relying on the undertaking of the parliamentary assistant.

The Chair: Mr Philip, in summary.

Mr Philip: What we have at stake here is more than just this bill. What we have at stake here is a process of how Parliament and parliamentary committees work. Anyone who has any understanding of either the congressional or parliamentary system has to increasingly feel as I do, that if the complications of big government and big business are to operate in a democratic manner, then committees of parliament have to have a number of things at their disposal.

One of the things they have to have at their disposal is adequate research. We have provided for that by having a nonpartisan researcher assigned to the committee. In order for that researcher to at all be useful to this committee, the researcher has to have access to all documents so that the committee members are adequately briefed. We need not go to Washington to see how some effective committees can work with adequate research and adequate briefing. Indeed, some of the committees around here have from time to time risen to those heights. I find it absolutely inconceivable that this committee should be asked to deal with a matter as complex as this before it even started the research on which this very complicated piece of legislation is based.

When I go back to having chaired the standing committee on administration of justice in 1977-78, we were dealing with Mr McMurtry. Mr McMurtry tabled one set of research after another, white paper after white paper, in dealing with a very sensitive area; namely, family law reform. As a result of that and as a result of the public being aware of the research, as a result of members of the Legislature being aware of the research, we were able to come up with some laws which we may have had some disagreement with, but at least there was an adequate dialogue based on information, based on proper public input and based on an ability of a committee of Parliament then to actually deal with the same information that the government had and on which it was making its decisions.

We still agreed in some measure, not maybe in very large measures, with that legislation, but at least our debates were focused and we knew why we disagreed. To suddenly bring in 20 or 23 pieces of research after the hearings I find is not only an insult to our researcher, who is trying to do his job for this committee, but an insult to members of the committee who are trying, and I include the Liberal members of the committee, and therefore to Parliament, but of particular insult to the public who are being asked to

comment, who in large measure have been scoffed at by certain members of this committee as not knowing what they were talking about while at the same time not having an opportunity to see the research on which the government is basing its legislation.

I guess one can only conclude then that either the government is trying to cover up because the research is not favourable to it or the government has inadequately done its research prior to the legislation and is now trying to do research to try to justify this legislation which all groups, with the exception of the insurance companies, find to be indefensible legislation.

I ask members, including Liberal members, if you want to do your job properly, why not ask for the tools by which you can do your job in an intelligent way and vote to have the information so that we can all examine it in an open way rather than have only the government or one ministry have it behind closed doors?

The Chair: I would like to read the motion, and then I am assuming we are going to have a recorded vote. I will not even ask that; I will just assume that.

That the ministry supply by 29 January to the clerk of the general government committee for immediate distribution all studies completed and a list of all ongoing studies not completed with a summary of the objectives of these uncompleted studies, and that the clerk contact members of the subcommittee by 30 January to decide what further action might be required.

The committee divided on Mr Philip's motion, which was negated on the following vote:

Ayes

Kormos, Philip, Runciman.

Nays

LeBourdais, McClelland, Oddie Munro, Nixon, J. B., Sola, Velshi.

Ayes 3; nays 6.

The Chair: Before we adjourn, I am still going to take the offer by the parliamentary assistant to go back to the Ministry of Financial Institutions to determine if the studies can be released earlier than 6 February and that he contact the clerk of the committee as soon as he is aware of that information and that the clerk of the committee communicate that information, at a minimum, to the subcommittee. Depending on what the parliamentary assistant relays back to the clerk, we may hold a meeting on Sunday night in Windsor with representatives from the Ministry of Financial Institutions.

Mr Ferraro: I understand that and that commitment is made. Hopefully, I will get back to the clerk today; if not today, before noonhour tomorrow.

The Chair: The committee stands adjourned till nine o'clock, 5 February, in Windsor.

The committee adjourned at 1523.

CONTENTS

Thursday 25 January 1990

Insurance Statute Law Amendment Act, 1989	G-625
Dominion of Canada General Insurance Co.	G-625
Canadian Auto Workers, Local 222	G-632
Chedoke-McMaster Hospitals	G-637
Dr H. J. Glasbeek	G-642
Hamilton Law Association	G-648
Social Planning and Research Council of Hamilton and District	G-654
Ontario Psychological Association	G-660
Family Mediation Inc.	G-664
Donald L. Grant	G-669
Ilya Trest	G-671
Robert Agnew	G-674
Adjournment	G-682

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair: Pelissero, Harry E. (Lincoln L)

Vice-Chair: LeBourdais, Linda (Etobicoke West L)

Bryden, Marion (Beaches-Woodbine NDP)

Carrothers, Douglas A. (Oakville South L)

Charlton, Brian A. (Hamilton Mountain NDP)

Furlong, Allan W. (Durham Centre L)

Nixon, J. Bradford (York Mills L)

Runciman, Robert W. (Leeds-Grenville PC)

Sola, John (Mississauga East L)

Velshi, Murad (Don Mills L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Kormos, Peter (Welland-Thorold NDP) for Ms Bryden

McClelland, Carman (Brampton North L) for Mr Furlong

Oddie Munro, Lily (Hamilton Centre L) for Mr Carrothers

Philip, Ed (Etobicoke-Rexdale NDP) for Mr Charlton

Sterling, Norman W. (Carleton PC) for Mr Wiseman

Also taking part:

Breaugh, Michael J. (Oshawa NDP)

Clerk: Carrozza, Franco

Staff: McNaught, Andrew, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Financial Institutions:

Parrish, Colleen, Director, Policy and Planning Branch

Ferraro, Rick E., Parliamentary Assistant to the Minister of Financial Institutions (Guelph L)

From the Dominion of Canada General Insurance Co:

Waugh, Donald, President and Managing Director

Christie, James K., Vice-President and Chief Actuary

McCubbin, Lorne D., Vice-President, Claims

From the Canadian Auto Workers, Local 222:

Sinclair, John, President

From Chedoke-McMaster Hospitals:

Basbaum, Mel, Chief Social Worker, Rehabilitation and Chronic Care Programs

Finlayson, Dr M. Alan J., Director of Psychology, Rehabilitation Centre

Shue, Dr Karen L., Psychology Department

Individual Presentation:

Glasbeek, H. J., Professor of Law, Osgoode Hall Law School, York University

From the Hamilton Law Association:

Ivey, David, Vice-President

Morris, William

Smye, David

From the Social Planning and Research Council:

Pennock, Mike, Executive Director

Welland, Doug, Board of Directors

From the Central Region of the Ontario Psychological Association:

McMaster, Dr Carol Corlis

From Family Mediation Inc:

Brown, Barry

Individual Presentations:

Grant, Donald L.

Trest, Ilya

Agnew, Robert



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Legislative Assembly of Ontario

Standing Committee on General Government

Insurance Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Monday 5 February 1990



Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

CONTENTS

Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Monday 5 February 1990

The committee met at 0901 in the Erie and Huron Rooms, Hilton International, Windsor, Ontario,

INSURANCE STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

The Chair: I am going to recognize a quorum and call to order the standing committee on general government and welcome before the committee the Kent Law Association, Mr O'Brien. I believe the clerk has distributed copies of your brief. The next half hour is yours, sir. If you could leave us some time for questions, comments and discussion, we would appreciate that. For the benefit of Hansard could you identify yourself and the gentleman who is with you and then please proceed.

KENT LAW ASSOCIATION

Mr O'Brien: My name is Jerry O'Brien, and I am a lawyer practising in Chatham, Ontario. I am here on behalf of the Kent Law Association. With me is Ike Vandersluis. He is a farmer from Fargo, Ontario, which is just outside Chatham, and I will be introducing him in more detail a little later on in our submission because I think he has a sad situation that the committee should listen to and take some caution from.

I am sure the committee has had extensive representations about the impact of Bill 68, and I would like to focus our submission on the effect of the threshold and how we perceive it will affect the citizens of our county. Kent county is an area that comprises approximately 200,000 people, and as an economic area, it is broken down mainly into agricultural workers, workers employed in the auto-related factories and workers working in small businesses. It is not a diverse economic area, most of the activity occurs in those three areas.

The concern we have is the effect of this threshold system that is being proposed, what that will have on the citizens of our county. It is our feeling that the threshold will result in the elimination of compensation claims for 90 to 95 per cent of traffic victims, and we accept the government's assertion in that regard. We are at a

loss to understand why that is a policy objective of this particular government. When considering threshold systems we think the conclusions of Mr Justice Osborne should be borne in mind, and I am sure the committee has probably heard these ad nauseam, but the effect of a threshold, particularly on the citizens of our area, is that it is discriminatory and that this particular threshold is going to eliminate claims that not only are serious but are quite serious and should be compensated.

One thing I would ask the committee to consider is, what is the effect on people when they are injured in a car accident and they are in that large grey area as to whether they meet the threshold or not? What are they going to do? They are going to come into a lawyer's office and they are going to ask—usually it is a very simple question—that is, "What are our rights?"

The response is going to be: "We simply can't tell you. You have to meet all these various criteria before we can tell you what your rights are going to be. We have to determine whether there is an impairment of an important bodily function, we have to determine whether that bodily function is serious and we have to determine whether the injury is continuing." All those questions have to be answered before the very simple question of "What are my rights?" can be answered.

In our view, most family physicians are not equipped to handle these issues, and the result will be that accident victims are referred to medical specialists, not for treatment purposes, not for healing purposes but simply to see if threshold criteria can be met. In an area where I practise, I should point out, there is only one orthopaedic surgeon dealing with the entire county population, and beyond that, these issues will have to be dealt with by family doctors. They simply are not equipped to deal with that kind of issue. Our feeling is that this threshold system will also add an increased burden to the health care system in the area, which is already overburdened at this time.

The second difficulty we have with the threshold is that an accident victim can be challenged more than once in respect of meeting the threshold criteria. The legislation contemplates a challenge by the liability insurer before

trial on the threshold issue, and even if plaintiffs are successful in meeting that threshold, they can be faced with a second challenge at trial. As a procedural advantage, this is unprecedented in terms of allowing a party to litigation to litigate the same issue twice. As a practical matter, the cost to an injured person in terms of proving his case is astronomical and may very well be prohibitive.

The traffic accident victim who has the misfortune to have suffered an injury that would be in the grey area in terms of the threshold will have no option but to proceed to court to find out if he has any rights at all. After much expense, he will finally have his day in court to find out if he is one of the 95 per cent or one of the lucky five per cent. If the claim fails on any one of the many criteria imposed by the threshold at any one of the multiple hearings into that issue, then it will be dismissed. If the claim is dismissed, then of course the injured victim receives nothing for noneconomic compensation or economic losses above the no-fault allotment. This is so even though the accident was in no way his fault. Not only will his claim be dismissed, but he will have to pay for his own legal fees through this exhaustive ordeal and he will have to pay for the expense of obtaining the medical evidence necessary to try to meet the burden of proof put upon him.

To add insult to his loss, not only would he be left without a claim and with a large invoice, but he will be ordered to pay about one half of the legal fees of the insurer who was successful in defeating his claim in court. The cost of this is simply beyond the ability of most persons to bear. The result of an unsuccessful threshold case will probably put the average citizen into personal bankruptcy. Not only will we have a new class of undercompensated motor vehicle accident victims, but we will have an additional new class of financially ruined threshold victims. Talk about a lottery.

How is one to advise an accident victim when faced with a quagmire of uncertainty, an insurmountable barrier to proof and a very expensive procedural course, all of which lie before the accident victim as an obstacle before one can answer his simple question, "What are my rights?" Such an ordeal will confront not only breadwinners but children, the aged and other persons whose losses do not happen to meet the paycheque test in terms of no-fault compensation. Such a system favours those with deep pockets. That has traditionally not been the accident victim.

After such an ordeal, what will the accident victim think about the system? What will he think about justice and its availability to him? What will he think about those who try to tell him there is a difference between right and wrong? Will he understand why he has ended up financially ruined in an accident that was in no way his fault? Will he understand why he has no rights?

Let me introduce Mr Vandersluis. He is a farmer. He and his wife, Andrea Vandersluis, operate a small veal operation near Blenheim, Ontario, in Kent county, and they have operated this farm since 1978. Mrs Vandersluis did most of the work on the family farm because Mr Vandersluis had had a heart attack and was under physical restrictions from his doctor. On 10 August 1984, his wife was seated in the family car when it was parked, and it was struck in the rear end by a young driver who was travelling at a very high rate of speed. I would like Mr Vandersluis to explain to you what happened to his wife in that particular accident and the experience that he had, both dealing with his no-fault insurer and dealing with his compensation claim, because his wife had the very type of injury that this threshold is going to eliminate. She had a soft tissue injury that developed into a chronic pain symptom, and also developed some emotional problems. She developed a fear of driving in a car. She cannot drive now because of the phobia she suffers as a result of the accident.

He can explain to you what his wife suffered and the difference that this proposed legislation would mean to him and his wife versus what the present system provided to him.

0910

Mr Vandersluis: Since we had this accident—I find that this legislation is going to be very wrong. I came to this country in 1949. I have never been unemployed. I have four children. I educated them; I educated them well. I have been in business for myself for the last 30 years and have been successful. Then this accident happened and for five years we practically went through hell.

My wife will never be right again. I wish I could have brought her today, but she simply cannot do this kind of thing. If it would not have been for family and if it would not have been for the people whom I raise veal for having me financed for these five years, I would have lost my farm. I find it very unfair, having worked hard for 40 years, and then through one accident I stand to lose it all.

In the business way, we came through high interest rates and we survived. We built things up

again and were ready to go. We had things under control again. Then this accident happened and there was a big chance that I would lose it all through no fault of mine. I am sitting there—I cannot talk like a lawyer or a member of parliament can—as a layman and as a farmer.

To start with, it is forced upon me that I have to buy insurance, and then when something like that happens, the first thing the insurance company wants to do to me is renege on it. Now, the insurance companies are coming and saying: "Well, it costs us too much money. People are suing us for too much. We're losing money." You could fool me; I do not believe it.

If we are going to go to no-fault insurance, we are still going to have to sue them for it because we now have a certain amount of no-fault insurance and the first thing my insurance company did was renege on it as soon as possible. We went through a trial which only lasted a day and a half, and I was only able to be in that trial, I think it was, two hours, and I was asked to leave and sit in a waiting room. While I was there, too, I remember vividly that the lawyer for the defendant asked the doctor, if my wife would have gotten help sooner, would she have felt better? Well, let me tell you what we went through when this happened.

It was about, I think, two or three days—do not quote me on the days. The first two or three days my wife was all right and then all of a sudden things went really haywire. She was screaming in the house. She could not stand the pain. We went to a doctor. I think I waited about 10 days and I went to see a lawyer. He was the one who told me that I should go and see a doctor in London, which we did. In five years, I travelled 30,000 kilometres with my wife.

I think insurance companies have the resources that they could have told us and sent us to a good doctor. We had to find him ourselves, one doctor to another to another until we finally found the right one. Then my wife was in the pain clinic in London for six weeks; at Dr Deathe I think it was three weeks to straighten out her medicine before they had her stabilized, to take all the medication out and then put her on the medication which she needed and which he told her that she will need the rest of her life.

We are also now in the position—he told us that he could not take away her pain; he could not take away her disability. He could teach her how to live with it, which he has done, which he has done a tremendous job on. We are living with it, and we are going to survive it. But it is going to be a sad day when they are going to tell us:

"Tough. You'll just have to live with the financial burden too."

I think that is all I have to say. I think it is wrong, very wrong. Thank you.

Mr O'Brien: Just to put Mr Vandersluis' situation into perspective, his wife did receive no-fault benefits, under the existing legislation, of \$140 a week for about three years. They were then terminated by the no-fault carrier because it concluded that she could do some of the bookkeeping around the farm and that was enough to take them out of the obligation to pay. That was notwithstanding the fact that she was not receiving any money whatsoever and not receiving any compensation from any other source.

At the time of the accident, her gross income from the family farm corporation was \$9,500. That was all she made, notwithstanding the fact that she worked 60 to 70 hours a week. This situation is not unique in Kent county. It happens all the time. She maintained a compensation claim which was settled for \$205,000 after two days of trial about two months ago.

If the proposed legislation had been in effect, the difference to her would have been that she would have received a \$6 a week increase in her no-fault benefit and her compensation claim of \$200,000 would be taken away simply because she could not meet the threshold. I think the committee should be aware that this kind of legislation has that potential effect, that it is going to leave people in the situation of Mr and Mrs Vandersluis bankrupt, simply because they cannot meet the criteria.

In exchange for taking away \$205,000, it will leave them with \$6 extra a week for a period of three years. We do not think that is fair. We do not think that is a fair trade in terms of balancing the need to have reasonable premiums on insurance costs with the rights of citizens to be compensated for what they lose.

Consider the situation of a young child. Let's say he is 10 years old and he has been run over in a car accident on the way to school. He comes into our office, he is with his father, and he says, "I had a broken leg and I missed my year at school, but I'm better now. But what I'd like to know is, what are my rights?" We have to go through the fact that there is a threshold system in place and that really he does not meet the criteria. We have to tell him: "I'm sorry, you don't have any rights. This legislation took them away."

What are we supposed to say to that person or to his father when he turns to us and says: "How did this happen? Why is it like this?" How do we

answer his question about why his rights are taken away? In the name of what better good is this legislation being proposed?

In our submission, the committee should address these questions before it rushes into this type of legislation. It has already been recommended that this type of system not be brought into this province by both Mr Justice Osborne and by the Kruger commission. It is our submission that the committee should seriously consider what effect the threshold is going to have on the citizens of this province before it rushes ahead, contrary to the advice that it has been given up to this time.

If there are any questions that the committee members might have, I would be prepared to answer them.

0920

The Chair: I have Mr Kormos, Ms Oddie Munro, Mr McClelland, Mr Nixon, Mr Runciman. Mr Kormos, four minutes.

Mr Kormos: Thank you. Mr O'Brien, and perhaps more importantly, you, sir, the bad news does not end there, because among other things, Mr Justice Osborne and Don McKay, the general manager of Facility Association, have both said this: that if this bill gets passed, if this legislation goes through, people like yourself, farmers, other small business people, will not be able to get insurance. You will not be able to buy insurance from a regular insurer. You will be forced into the Facility Association, where the rates are two, three and four times what they are in the regular market. The rates are \$2,000, \$3,000 and \$4,000 a year. Why? Because you, as a farmer, and the small business person, do not have an employer-provided income replacement program. What that means is that you will be less attractive to an insurer because that insurer will not be able to dip into that well before it has any obligations to pay out to you.

The insurance industry shows up here and it has shown up here—I should tell you this. We have been travelling a little bit in northern Ontario, not a whole lot, because the Liberals did not want to travel very much with this. As a matter of fact, the Liberals did not want to have hearings at all. Short of a couple of exceptions, by and large the only people who have shown up before this committee supporting this legislation have been from the auto insurance industry, and for good reason, because it is going to make profits for them that they have never dared dream of before. But virtually everybody else—professionals, health care people, head injury people, victims of motor vehicle accidents,

police associations, teachers, trade unions, workers, small business people—has said this is bad legislation. The Liberals and the insurance industry are trying to create the image that everybody is wrong but them.

You see, the really big lie comes in when we talk about controlling premiums, because we have known for a long time that premiums were getting out of hand in this province. The first big lie was when we were told that premiums are going to be perhaps eight per cent, and the insurance industry has been spouting that garbage as well. But all of a sudden the minister, last week or the week before, said: "Sorry about the eight per cent. What I really meant to say is eight per cent for some people, 50 per cent for others, but those are only the Cadillacs and the Lincolns." Well, the big question is, what about the Chevy Lumina and the Olds 88s and the Chrysler New Yorkers that fit somewhere in between? So the real truth is anywhere from eight per cent to 50 per cent.

The sad thing is that the insurance industry has managed, because of its control over this government, to switch things right around. They are no longer insuring you if this bill goes through, but you are going to be insuring them. Their profits are going to be insured on the broken backs and legs and fractured skulls of innocent victims; even more sadly, as has been pointed out so many times, on the backs and legs and injuries of little kids, little innocent victims, kids who could be victims of drunk drivers. This legislation will treat a drunk driver better than it will treat the 12-year-old victim of that drunk driver, who is mowed down on his or her way home from school or a soccer practice or the skating rink on a Saturday morning.

The insurance industry, of course, comes here like Mother Teresa. It comes here as if no wrong had ever been done, saying, "We know we might have been slipshod in the past, but we promise this time, we promise this time." That is the ultimate insult for those gougers—and that is what they have been. They have been dipping into your pocket. They have been picking your pocket year after year, decade after decade. They have been the proverbial sacred cow in this province, delivering a steady line of sacred bull. They have been dipping into your pocket, and now they want to grab you by the ankles and turn you upside down and shake every last nickel and dime out of you, and not just out of you, but out of the victims, like your wife, because they want to make profit on her pain and on her suffering and by denying her compensation.

I tell you that is not right and I tell you, for the Liberal government, for the mere sum of \$100,000 and change that it received in the last provincial election, to sell out for that kind of money is shameful and worse.

I have been accused of using less than domestic language in describing this legislation and in describing the role of this government. I tell you, I do not retract a single word of it, because it is difficult to find appropriate and polite language to describe this legislation, to describe what the insurance industry is doing to you and other drivers. I tell you that.

The Chair: Ms Oddie Munro and Mr Nixon for up to four minutes.

Ms Oddie Munro: I wonder if you have had a chance to look at the regulations as they relate to the inclusion of psychological aspects in the no-fault benefits and the opportunity for taking that through the threshold in representation of clients. I do not know if you have had the opportunity of following some of the hearings, but certainly the Ontario Psychological Association and the rehabilitation people have given us some very helpful suggestions for amendments. So I wonder if you could comment at least on your knowledge at this point of the movement on the psychological definition.

Mr O'Brien: The provision for psychological services under the regulation simply provides for a reimbursement of expenses incurred in connection with psychological assistance that a victim might have. It does not deal with the fact that the threshold precludes recovery if an injury is psychological in origin.

Ms Oddie Munro: I think that is not true. I think the regulations attempt, by virtue of definition of the accident and the rehab, to include psychological damages, assessment and rehab, and there are instances in which the evidence of psychological damage will put the client up to the threshold. Obviously, you have not seen that.

Mr O'Brien: Excuse me, I have read it, and my understanding of the proposed no-fault coverage under the regulation is that reimbursement for a victim is available for psychological and other rehabilitation services.

Ms Oddie Munro: And the rehab itself is certainly available for psychological damage.

I wonder if you could take a look at the current benefits and the proposed benefits. I think we are all very interested in making sure that the injured person receives fair reimbursement, so I am wondering if you would care to comment on the

fact that under the current legislation there does not seem to be very much at all in terms of long-term benefits, and certainly there is an increase in rehab. I would suggest to you that the reason people do not use up to \$25,000 is that many of them are simply not aware of it. I think it is up to the insurance company to make sure that people understand exactly what their due is. So I agree with you; I do think that they will use the \$500,000 once they are more aware of it.

Second, under the current legislation there is no provision for long-term attendant care and no provision at all for family or day care. We are all looking at the clients, and I am wondering whether you would care to comment on the fairness of that in terms of proposed

Mr O'Brien: The experience in our county has been that under the present system perhaps one per cent, maybe two per cent, of all injured traffic victims actually use the full \$25,000 that is available to them. Mrs Vandersluis was able to resort to the \$25,000 in her case, but I think she only used maybe \$5,000 or \$6,000 total, including the psychological care she was getting after the accident and the rehabilitation program that she was in. The pain clinic that Mr Vandersluis mentioned was all paid for by OHIP, so there was no need to resort to that coverage. Our experience has been that the bulk of the treatment and the rehabilitation of most traffic victims is covered by OHIP, and it is mainly things like medication therapy or other services. When you start to get into the coverage under the auto policy, the bulk of it is all covered by OHIP already.

Ms Oddie Munro: But we are talking about access to rehab by the patient through whatever means are either a part of or covered by an insurance policy. It is our understanding that on the no-fault side, this bill has certainly gone a long way to providing the kind of rehab as fast as possible—payments going out as fast as possible—which was not available before. Certainly it is our intention to make sure that people know exactly what benefits are available to them.

0930

Mr O'Brien: If I could simply say this: In the case of Mrs Vandersluis, changing the limit from \$25,000 to \$500,000 and even doubling up the long-term care over and above that would have made absolutely no difference to her situation.

Mr Runciman: I think that is about the 50th time we have all heard that kind of testimony, and she still continues with that line of questioning. The benefits are totally illusory, and

government members who push that line get to be a little tiresome, to say the least. They just ignore the kind of testimony that we are hearing here this morning.

Mr O'Brien: May I—

Mr Runciman: No, I do not want you to respond to her. I would like to ask you—

Mr O'Brien: It is a grey area.

Mr Runciman: It is not coming out of my time.

Mr O'Brien: Okay.

Mr Runciman: I only have four minutes. That is the problem. We are very seriously restricted in our ability to pursue the lines of questioning on this committee.

I would like to talk a brief bit about the process here in respect to the final settlement that the gentleman received, the \$205,000 that you talk about. The accident occurred in 1984 and this was a final resolution in terms of the out of court settlement of \$205,000. When was that arrived at?

Mr O'Brien: November of last year.

Mr Runciman: So it took a little over five years to get a final resolution.

Mr O'Brien: During the court proceeding, because it was a nonliability case, in terms that liability was in fact admitted, we were able to get advance payments for Mr and Mrs Vandersluis to help them through the financial difficulty that they were having. The reason it took five years largely dealt with obtaining a final medical prognosis as to her situation and determining what the full economic impact on the farming operation was.

Mr Runciman: Right.

Mr Vandersluis, we have heard government members and the minister himself talking about the benefits of this speedy delivery that would have given you an extra \$6 per week for three years versus the tort system, where you were able to receive a settlement of \$205,000. I guess I would like to hear your views in respect to this time delay between the settlement.

Obviously, you are here today because you feel that the tort system, even though there are some flaws and some difficulties that have to be overcome—you have felt that you and your family were much better served by the system that is currently in place than by this legislation that we are discussing now. I would like to hear your views, really, on the tort system and how you feel about it.

Mr Vandersluis: Of course, we were very disappointed to start with that it had to take so long. There is not much to say. On my part, there is so little you can do. If you commit a criminal offence, you are innocent until you are proven guilty. If you get into something like this, you are guilty until you are proven innocent. For five and a half years you are made dirt.

They send you to doctors with no-fault too. We were sent to three doctors, the first by my own insurance company. The first two doctors said she could not work. But they keep going until they finally find one who says there is nothing wrong with you. This is two and a half years into the thing. We went to a doctor in Windsor here and he spoke to my wife for 10 minutes and then reported: "Well, it comes down to it that there is nothing wrong with you. It is in your head."

And at the trial too. First we had the discovery. That was supposed to be it. Then you have a pre-trial. Now we got to have a discovery again.

Mr Runciman: What for?

Mr Vandersluis: At the first discovery they asked us 1,140 questions, over and over again the same thing.

Mr Runciman: This was the insurance company that was actually giving you that kind of a rough ride.

Mr Vandersluis: After seeing I do not know how many doctors, as I told you, driving my wife 30,000 kilometres to doctors, finding the right doctors, they were entitled to an opinion of their doctor and they sent her to a neurologist, which had nothing to do with it, and they saw that they made a mistake. Then we had to go to another one. This guy was a psychiatrist.

Mr Runciman: Could I interrupt, Mr Vandersluis. We have limited time. I would like to direct this question to Mr O'Brien. Obviously there were some problems in the process of this when it went its course. I am wondering how you feel about the current system, how it could be improved to expedite situations like this gentleman experienced.

Mr O'Brien: Certainly there are reforms that can be made to the current system that we feel will make it go quicker. The largest difficulty in terms of getting the case resolved was reaching a final medical prognosis, and that really was not available until about the four-year point in Mrs Vandersluis's case. It was simply because of the nature of the problem that she had, which was soft tissue that became a chronic pain problem, with psychiatric problems over and above that.

Until the long-term prognosis was available, the case really could not be resolved in any meaningful fashion.

I am not sure what reform you could enact to make that process go better, because that was a medical problem; it really was not a legal problem. Once the case was ready for trial, it was disposed of within about eight months of being put on a trial list. So it received relatively speedy treatment from that point of view.

The Chair: Gentlemen, thank you very much for your presentation. I have Mr Ferraro with a point of clarification.

Mr Ferraro: I have just a quick point. I would say thank you, as well, for attending. I just wanted to say that the government's view and Mr Kormos's view vis-à-vis the availability of insurance and the aspect of whether or not farmers or small business people will have to be dumped into Facility are diametrically opposite. Quite the contrary, we think that stability will create, and indeed the insurance commission will create, a fairness that indeed will result in more options for people like yourselves, and the availability of insurance will be guaranteed.

Mr Kormos: What he is saying is Justice Osborne agrees with me and the insurance industry agrees with him. Big deal.

The Chair: Gentlemen, thank you very much.

I believe the clerk has distributed copies from the Windsor & Essex County Insurance Brokers Association, Mr Comisso and Mr Taylor. Gentlemen, we have half an hour. If you could leave some time at the end of your presentation for some questions, comments and discussion, we would appreciate that. Maybe for the benefit of Hansard, you could identify yourselves and then proceed.

WINDSOR AND ESSEX COUNTY INSURANCE BROKERS ASSOCIATION

Mr Comisso: My name is John Comisso and I am the president of the Windsor and Essex County Insurance Brokers Association. To my right is Terry Taylor, general manager of the Insurance Brokers Association of Ontario.

First, I would like to welcome the committee, on behalf of the Windsor and Essex County Insurance Brokers Association, to Windsor and Essex county. We certainly appreciate the opportunity of appearing before this committee in Windsor, and also appreciate the fact that you are hearing from all sides of the issue. I would like to point out that I am here to represent the brokers, not the insurance companies.

There have been several insurance commissions, boards and reports created in Ontario over the last five years. The Ontario consumer, whom I serve directly, is demanding changes. The time for action is now. I would like to comment on some aspects of Bill 68 and how we feel this bill may fill the need for those desired changes in the automobile insurance marketplace.

The substantial increase in accident benefits as well as the inclusion of students, retirees and the unemployed are long overdue. We have had many cases where people who fall into those categories are left without benefits and unfortunately suffer severe economic losses. Presently, if a driver who is a sole supporter is seriously injured in an accident and she is at fault, the most that she would collect is \$140 a week. Under the new system, her family is not penalized because the accident was the mother's fault. She can collect up to \$450 a week for life.

A common complaint from insureds is that their accident benefits cheque is late due to a delay caused by the adjuster or the doctor or the company. Now, those accident benefits will be paid within 10 days, or 30 days for all other benefits, or suffer severe penalties. If you are like most people who live from paycheck to paycheck, this is a great improvement. It also helps keep the banks and other lending institutions from foreclosing on the family home or repossessing the family car. One of the best components of this bill is the fact that the insured deals with his or her own insurer, and if the service is not adequate, he or she can switch companies.

The biggest complaint that clients have is the cost of the product, and in this city they have just cause. We now pay the highest rates in the country.

0940

If I could digress for a minute, Windsor is in kind of a unique situation in that it has a population of about 195,000 and the county total population is around 250,000. Even though we have that many drivers in this city, we have approximately two million cars a year coming across the border, either from the bridge or the tunnel, and that creates a unique situation in the increase in the number of vehicles per traffic mile. The consequences of that are part of the reason that causes our rates to be the highest in the country, at least for now.

6. The availability of insurance is now a problem for the grey risk. The grey risk is anyone who differs from the ideal risk. The ideal risk is one who has had his or her licence for 40 years

with no accidents, does not drink or smoke or work, and whose car is bolted to the garage floor. I am joking a bit here in regard to that, because some insurers do take that attitude but not all of them. All too often these grey risks end up in Facility when they should not be.

I will give you an example. I had a fellow insured who was a graduate student in Windsor. I had him insured for two years. He then left and went to the University of Alberta to do some further graduate work. He had to give up his Ontario driver's licence to get an Alberta driver's licence. He was with the same company for two years. In the fifth year he went away to school. The vehicle that he was driving had had the biscuit, so he ditched the car and did not drive. He came back to Ontario this year and unfortunately, because he had no track record for the past year and he did not have an Ontario driver's licence any longer, the insurers would not accept this risk. Hopefully, this will change and the new insurance bill will create a new attitude among insurers so that they will accept these grey risks at reasonable rates.

I am also glad to see the requirement that Facility carriers must offer monthly billing, which makes a lot of sense since these drivers are now paying the highest premiums in the province.

7. The worst legacy that a son or daughter can leave his or her parents is to have one or two at-fault accidents with daddy's car and then leave the house. Under the new legislation, this driver can now be excluded and the parents do not have to pay for the sins of the sons and daughters.

8. The enforcement side of this legislation is welcome news. I have seen some Facility drivers' abstracts which have recorded 10 or 12 tickets in the last three years. The government must pour on the heat to these drivers or we are all in trouble when we hit the highways.

9. I am hopeful that if this legislation is enacted, the insurers who have been requesting this reform will now have the required predictability to set rates at a reasonable level and accept many more drivers in the standard market.

10. This legislation is not perfect, just as the Model T that Henry Ford made was not perfect, but I am glad for this town that he did not scrap his idea, just as I hope that many of the ideas proposed in this bill are carried forward. I do, however, have a couple of suggestions—and these are for future consideration; not to stall the benefits that are outlined in the new legislation: (a) The accident benefits should be increased at the very least by the cost of living on an annual

basis automatically; and (b) if a student or housewife is ready to enter the workforce, their benefits be increased to the maximum level of the job they would have had if they were able to return to work.

This concludes my formal presentation. Again, I thank the committee for affording me the courtesy of giving my presentation. Both Mr Taylor and myself will field questions.

Mr Kormos: Mr Comisso, remarkably, there is very little in your brief that I can disagree with, because you have praised a long overdue adjustment to the no-fault benefits. We have had no-fault in this province for a long time now, well over a decade. We in the New Democratic Party have always advocated that there should be a strong no-fault system, so that everybody has certain things provided for them.

But what you have not done is comment on the elimination of the right of the vast majority of injured victims to be compensated for pain and suffering. Do you think it is fair that a 12-year-old kid who is struck by a drunk driver and has two broken legs should not collect a penny in compensation for pain and suffering?

Mr Taylor: I think what we are talking about is whether or not the people of this province can afford to maintain the status quo with the system they have. If they want to pay another 35 per cent or 40 per cent in premiums this year and more next year and more the year after that, they can keep the pain and suffering in place, but they are tired of paying higher premiums. If they want to pay a reasonable premium and get adequate coverage, then we have to change the system.

Mr Kormos: Murray Elston announced a week and a half ago that some drivers' premiums are going to go up 50 per cent, not eight per cent. Do you disagree with that figure?

Mr Taylor: I am not privy to the total actuarial predictions of the bill. Taking all the drivers in a given territory, depending where that territory is, some will pay no increase and in other territories the average will be an eight per cent increase.

Mr Kormos: Yes. You have been saying that since before Murray Elston said 50 per cent. Have you changed your mind now that Murray announced that premiums are going to go up 50 per cent for a big chunk of drivers?

Mr Taylor: I think the two are not inconsistent. I think the average predictions for the people of Windsor are that on the average the total premium pot would stay the same.

Mr Kormos: Whose prediction is that?

Mr Taylor: I understand that is the actuaries' prediction that backed up this proposal.

Mr Kormos: Wait a minute; you know something we do not, because we have been begging for that. I asked the minister in the House for the actuarial tables that permitted him to say eight per cent and he did not have them then. We asked Rick Ferraro, the parliamentary assistant, at the beginning of these committee hearings for the actuarial figures then and he said they were in the works. We asked him to produce them when he said they had them, and they said: "No. We are going to delay. We are going to stall." It is going to be 6 February before we get them and there are only three days left of hearings.

Have you seen the actuarial figures?

Mr Taylor: I am going by the information that was in the minister's statement of 15 September. I think that is still available to you.

Mr Kormos: You have not got any information that the insurance industries have developed to justify a claim that it is only going to be eight per cent.

Mr Taylor: They do not tell brokers anything, Mr Kormos.

Mr Kormos: No, but you come here making submissions to this committee and I am confident that you are in the dark or else you would not be saying some of the things that you are. You do not have any figures upon which you base your claim about eight per cent.

Mr Taylor: I am just reiterating the figures that were provided to me by the minister in the statement in September.

Mr Kormos: So all of your information is the stuff you got from the minister and the ministry in little things like their Ontario motorist protection plan package.

Mr Taylor: I have confidence that the government of the day is going to provide the citizens of this province with accurate information.

Mr Kormos: You come here making a submission and all you are doing is spouting what the government told you. That is remarkable, is it not?

Mr Taylor: I do not agree with that, sir. I am coming here trying to give an objective view as to where I think this legislation is going to benefit the consumers of this province. Regardless of the premium issue, we are talking about benefits and the availability of coverage and this bill goes a long way to providing those benefits to the

consumers. If they want the same system that they have now and keep the pain and suffering, they just pay 50 per cent more than they are paying.

Mr Kormos: Do you have any information as to why this government would not have permitted the Kruger Ontario Automobile Insurance Board to inquire into the cost of starting up the public driver-owned system?

Mr Taylor: No. I do not.

Mr Kormos: But the Liberals run one in Quebec and the Tories do in Saskatchewan and Manitoba. Incredible.

Mr Runciman: Mr Taylor has been appearing before us on a number of occasions now and saying essentially the same thing.

Mr Kormos: He says the same thing.

Mr Runciman: It is Mr Kormos who is quoting the government's statement in September.

I am wondering what your association's reaction was to what has been described as the most comprehensive study ever done about auto insurance in North America, and that is Justice Osborne's report, which indicated improvements on the no-fault package such as we are looking at today and very strongly urged retention of tort with some tort reform measures and a number of other measures which, indeed, would have seen a reduction across the board for drivers in this province.

What was your reaction to that most comprehensive study?

Mr Taylor: Interestingly enough, we did publish a little booklet that was sent to all members of Parliament. You received it in your office in June 1988. It was entitled, *An Insurance Broker's Perspective on the Osborne Report*. While we did not necessarily get into that particular issue, we did correct what we thought were some inadequacies and some misperceptions that the report stated about the role brokers play in the provision of benefits to the consumer.

Mr Runciman: The delivery of benefits, yes. Essentially the brokers' association did not have any difficulty with the thrust of the Osborne report, did it?

Mr Taylor: We did not take a public stand on the contents of the report. We noted some things that Mr Osborne had noted. We did not take issue with whether it should be fault or no-fault or whatever. We were concerned about some of the inadequacies in the report with respect to brokers' rules.

0950

Mr Runciman: Yes, I recall that. I am just somewhat concerned that you are here taking such a strong position in support of this particular piece of legislation without having the facts before you, without having any actuarial studies before you—which we have not had access to either, as has been pointed out. You are taking this kind of a strong advocacy role travelling around the province in that kind of a function where you had what I said was the most comprehensive study ever done which urged retention of tort and compensation for pain and suffering.

We had the Ontario Automobile Insurance Board under Kruger essentially say much the same things, and now with no information on the table whatsoever you are here before us travelling around the province strongly endorsing this package that is going to significantly reduce benefits for Ontario drivers, and I find that pretty difficult to deal with.

Mr Comisso: I would like to speak to the issue, if I may. I am faced daily with what is available, the cost of which is being borne by consumers right now in Ontario. I agree with Mr Taylor to the extent that if we are here to serve the public, if the public wants system A or system B, that is fine; but the public is saying that the existing system is very costly, especially in this city.

I am also here to speak to the benefits that are outlined in this legislation, which I find to be a far cry from what exists right now. If the public, according to what you are suggesting, wants the existing system to continue then it is going to cost a lot more. I do not think you are the one who gets the phone calls in the office every day like we do and meet the public on a daily basis like we do. If you want that type of assistance to continue and increase the cost substantially, then it may be fine for you, but we are the ones—

Mr Runciman: Well, again, sir, I would take you to task on that. You are suggesting that all of these lawyers benefit without any facts before you, really. We have not seen the actuarial studies. We are hearing suggestions now of 50 per cent increases. We have had the most thorough studies done by the auto insurance board and by the Osborne commission which suggested that reforms could be undertaken with the current system which would indeed not have the kind of impact that you are suggesting here today the current system will have.

This is what I am saying to you and will be repeating this again to Mr Taylor in future visits,

I guess. I have a lot of difficulty with the position you are taking here. You say you are not here speaking on behalf of the insurance industry but you are certainly delivering much the same message, and I want to say that we are hearing that message essentially only from people either directly in the industry or in some way, shape or form tied to the industry, like brokers. We have a lot of difficulty with that and that is my message to you today.

Mr Comisso: If I may allude to one example—and I suppose you could suggest that this one example is one in a million but it happens often—where a client of mine had a pickup truck, rear-ended a third party, and did \$325 damage to the third party's vehicle. The third party was off work for three weeks. He sued my client for \$45,000, \$25,000 of which was for general damages, \$15,000 of which was for his wife and two children and \$10,000 of which was for his four brothers and sisters, who live in Italy and never see the guy. The case was settled for approximately \$25,000. I am not suggesting whether or not he was justified, but when my client saw the figure of \$25,000 that was paid out he screamed bloody murder and did not understand why. I think I have to put myself in the exact same position.

Mr Runciman: I think I should have to respond to that. Osborne suggested some pretty significant tort reform which would deal with the kind of situation you are talking about, not this legislation. For example, some impaired driver significantly injures some individual. They are not going to have the right, as they do under the current legislation, to recover for pain and suffering, and that is the sort of thing you are saying to your client, "Sorry, Joe, that's out of the question now."

Mr McClelland: Mr Comisso, thank you for your appearance here this morning. I want to touch base with you on two aspects. One is the significant cost that the consumer pays in the Windsor-Essex county area. You may want to refer that back to point 4 in your brief and the impact on you as a broker working on a primary-benefit pay basis and the advantage that will be to the consumer; in other words, the first-party pay basis to your consumer.

The other thing I want you to comment on is, as a broker, you just mentioned the situation where a client's fees someone paid out to a third party were rather significant. I am sure there are cases that you have where clients are injured and there is no at-fault individual involved. In other words, victims of injury where no fault can be

laid at the feet of any particular individual have considerable difficulty in collecting benefits. I notice that happens from time to time.

Again, looking at point 4 in your brief, the fact that the insured deals with his or her own insurance company, I would like you to comment on how that is going to benefit those people in concert with increased benefits where apparently there is no person at fault in causing the accident.

Mr Comisso: Let me answer that by giving an example. Presently, if people are involved in a motor vehicle accident—this is just one aspect of insurance—invariably the first question that most people ask when they call you up to report an automobile accident is, “My car is going to be in the shop,” or “My car is totalled; when can I get a rental?” If they have got loss-of-use coverage—if they chose to buy it, and we offer it to everyone—that is fine, no problem; they can get a rental car. If they do not have it, then they have to wait for the other company to (a) decide fault, or (b) get up off its duff and provide that car to my insured.

I had a case a week ago where a third party struck my insured’s truck, which was parked in his parking lot, unoccupied. The truck was damaged to the extent that it could not be driven. He had not purchased loss-of-use coverage. The truck was towed to a body shop. I then called the third-party insurer and asked about getting a rental. We went ring-around-the-rosie on this thing, and this guy had to wait two or three days—and this is a businessman using the truck for his business—for the other insurer to decide who was at fault, and then he wanted to see a copy of the repair bill to check off the number of hours that it would take to repair this truck and would only allow him to have a truck for that period of time. If he had been dealing with his own insurer, I would have had him a replacement vehicle that morning. So in the same regard, when the insured is dealing with his own insurer, his service is much, much quicker.

The other example, if I understand your question correctly, is when there is a no-fault situation—for example, a fellow’s car slides off the road and hits a tree, he is off work, he has no one to sue and he is only permitted at present to collect up to \$140 a week. That is a tremendous economic loss if he has no other benefit program in place. This proposed legislation will substantially increase his no-fault benefits under the standard automobile package, and at the same time he could purchase additional benefits to increase it to whatever his level of income is.

Ms Oddie Munro: Would you care to comment on the advantages to the consumer of the tougher regulatory procedures and rules that apply through the commission, and also on the added responsibility to the brokers of providing information on choice and access to benefits? I am interested in your response to the additional information and education that is possible now for consumers.

Mr Comisso: I do not have a problem with the additional information because at present we, and I think most of the brokers in our association, if you require that additional information, make it available to you. What was the second part of that question?

Ms Oddie Munro: I would again like to refer back to the \$25,000. We are led to believe that some of the clients did not take advantage of the \$25,000 because they did not understand clearly what benefits could accrue to them. So I would assume that in all of the aspects of the bill, from long-term disability to rehab benefits, there will have to be a good deal more information in easy-to-understand language available to the consumers.

Mr Comisso: I have never found that to be a problem, at least in our agency, and I have never heard that to be a complaint by the insureds, but I certainly appreciate that aspect of the bill. If there is going to be more public information in that regard, all the better.

Mr Taylor: The legislation is going to require the insurers to provide a much higher quality of service than they have in the past, and I think that a full enunciation of the benefits available to the consumers or the clients or the customers is going to follow from that. So previous complaints about not knowing what was available to them, I think, will all but eliminate themselves in the future.

1000

The Chair: Gentlemen, thank you very much for your presentation.

We have Dr Yaworsky. Am I pronouncing that correctly? If I am not, please let me know. The clerk has distributed copies of your brief. You have half an hour. If you could leave some time for some questions, comments and discussion, we would appreciate that. Could you identify yourself for Hansard and then please proceed.

DR WALTER YAWORSKY

Dr Yaworsky: Yes, my name is Walter Yaworsky. I did send a letter dated 12 January 1990 to the committee. I am a psychiatrist

engaged in the private practise of psychiatry in this city. I have been here since 1965. I did send along a curriculum vitae at that time, but I do not know whether you want me to read that letter, which is not necessary. Anyway, the reason for my being here, wanting a few minutes of your time—I do not think I will need the whole half hour—is really to answer any questions that you might have about that letter. I do know that the section of psychiatry of the Ontario Medical Association, perhaps the Ontario Psychiatric Association, has given some brief or intends to give some brief, but I want to say a few words from a solo practitioner's point of view who has actual clinical experience.

The Chair: I think for the benefit of Hansard it would probably be useful to read the bulk of the letter, maybe starting with your second paragraph.

Dr Yaworsky: "In the course of evaluating and treating numerous patients over the past 24 years who have been victims of physical trauma from car accidents, it has clearly become evident that psychological injury and stress may also be precipitated by such accidents. Psychiatric symptoms of severe depression, anxiety, phobic experiences, persistent chronic pain and various degrees of crippling personality disorganization may occur.

"These psychological and emotional sequelae may occur early following a car accident or may be delayed in onset several months after the trauma. They can occur as pure conditions or disorders or as accompaniments to the physical disorders.

"Often the impact psychologically on the affected person becomes a major problem in rehabilitation for the patient and in some instances may even be insurmountable. There are cases of physical healing of the trauma occurring at an appropriate rate, but because of the effects of the trauma on the psyche and personality structure of the victim, the person may be rendered functionless. Indeed, psychological sequelae after a car accident have been proven to be frequently more disabling to patients than the actual physical damage that was inflicted. And increasing psychiatric literature over the last 15 years dealing with the psychological and emotional symptoms and disorders which occur following physical trauma has substantiated this.

"The province of Ontario has done much in recent years to advance the care of the mentally ill and psychologically disabled and affirm their freedoms and rights as equal citizens. To not include psychological, emotional and/or mental

injuries as considerations in assessing a person's disability would be discriminatory and would dismiss current psychiatric scientific knowledge.

"Respectfully submitted, Walter Yaworsky."

My only point in appearing would be to answer any questions to the committee, or I have some clinical vignettes or case illustrations to substantiate that, the goal being to show that in any legislation I would suggest and hope that the committee would give consideration to looking at the effects of psychological or psychiatric trauma, as well as physical trauma, on the victim.

Mr Runciman: I guess what you are saying is you have taken a look at the legislation that we are considering and the fact that it excludes the kind of situation you are concerned about from the passage of threshold.

Dr Yaworsky: Yes. At least from my understanding of it, I felt it excluded a significant portion of patients who would have been included up to now.

Mr Runciman: I know you mentioned it here, but you may want to expand on why you feel they should be recognized and consideration should be given to piercing the threshold.

Dr Yaworsky: In terms of rehabilitation and recovery, the psychological reaction of the injured party, the one who has been traumatized, can often come to be the major setback in that rehabilitation process. Patients develop a variety of psychiatric symptoms as a result of an injury, which really becomes a limiting factor for recovery even when their physical injuries have healed. So looking at the patient only as one with physical trauma would be separating the effect on mind and body and would really exclude a whole host of known psychiatric conditions that can occur following trauma.

Mr Runciman: I think it is interesting that the member for Windsor-Walkerville (Mr M. C. Ray), who happens to be a Liberal member, has shared your concerns publicly, although I guess reluctantly. It is regrettable. As well, we have Mr Cooke here representing a Windsor riding.

Mr D. S. Cooke: That is regrettable?

Mr Runciman: No, it is regrettable that Mr Ray, who apparently is in disagreement with his government, has not been able, for whatever reasons, to appear today. I think it would have been most appropriate if he could have been here. Certainly I have been urging on the government members who populate this committee to take an independent stand and cast a critical eye upon

this legislation, and they have been reluctant to do so.

We have seen Ms Oddie Munro consistently talk about rehab benefits. In effect, she is really attempting, in my view, to rehabilitate herself, along with a number of other members of this committee who have aspirations either to get into cabinet or rejoin cabinet. We are not seeing the kind of objective assessment of this legislation that all of us would like to see occur, certainly, when we have experts like yourself appearing before us expressing concern about psychological injury being restricted from passing through the threshold.

We have expert witness after expert witness expressing concerns about the impact and implications of the legislation, yet day after day we have to hear the same kinds of questions and lines coming from government members, who seem to be totally oblivious to what is going on around them and are only listening, apparently, to the insurance industry representatives, the brokers or those who are affiliated with them in some way, shape or form.

I do not have any further questions for you. I very much appreciate your being here. I hope your testimony has some modest impact on the government members of this committee.

The Chair: Mr Kormos for up to six minutes. I do not know if you want to share it with Mr Cooke. I will leave it between the two of you.

Mr Kormos: After all, Mr Runciman, they are merely following orders. It matters not whether those orders come from the Office of the Premier or from the boardrooms of big insurance companies here in Ontario, they are going to follow them.

Doctor, do you mean to say that a person could be in an accident, could be an innocent victim, perhaps have only modest physical injuries, bruises, minor cuts that heal rapidly, but then suffer psychiatrically significantly for a long time after that?

Dr Yaworsky: Exactly. Now, it can occur as an adjunct. The psychological problems can be accompanying the physical injury. The trauma could be a precipitating factor that brings psychological problems that had been latent or buried and would never have come up unless there was that extra trauma or trigger. Or it can produce a psychiatric syndrome in itself anew, such as you suggest in that example.

Mr Kormos: Is it fair to say that any one of us in this room are capable of suffering in that manner? Is that a fair comment?

Dr Yaworsky: I would suggest that we all have different potentials for breakdown of our so-called support system or defensive structures within ourselves. That will vary on multiple variables in our background, but I do know of cases, and I can give you a case illustration—

Mr Kormos: Perhaps you would.

Dr Yaworsky: If I can give you just quickly the case of DM, a single man injured in a motor vehicle accident in May 1980 at the age of 28 years. This is almost 10 years ago. Prior to the accident he was an effective worker and self-sustaining. The injuries were to the neck, shoulders and lumbar spine, which were mainly muscle tissue, ligamentous injuries, no broken bones.

1010

Mr Kormos: There was no threshold there.

Dr Yaworsky: He recovered from these, was then noted to become depressed, withdrawn, preoccupied, not working, developed paranoid ideas that he was afraid of being killed, remained hidden in his house and really developed a delusional depression with a psychosis. This onset was six to 12 months after the accident. He did not work during those six or 12 months while he was recovering from his physical injuries. He was treated with antipsychotics and antidepressants, with a stormy course. He developed a disabling psychiatric illness as a consequence of the automobile accident. This was verified by four different psychiatrists, three from Ontario and one from Michigan who is an expert in dealing with sequelae after trauma, because there was some litigation in this case.

In June 1985, after the start of a trial, a settlement was reached, with attention being given to the psychiatric, emotional sequelae. The patient was incompetent to manage his funds, and a trusteeship was established. Since then he has been followed by myself as an outpatient. He has progressed in treatment, but over the last five years he has still had episodic depressive disorders, has had one episode of suicidal regression, but was treated successfully. He then developed a stress ulcer, still as part of these traumas, was treated in hospital and then as an outpatient and cleared. He continued to slowly improve, still unemployed, and in late 1989 he improved enough that we were able to have him declared mentally competent and he was able to manage his own funds. He is slowly coming along.

His prognosis is fair to guarded. I still feel he is presently unemployable and there is potential for

flare-up of depression, but he has some insight and comes for help.

This would be a case where the psychiatric sequelae have turned almost into a chronic nature and caused some permanent damage. In other words, his physical disorder did heal, but the blow was so severe that it rendered him, as a human, functionless in terms of work.

In another case I will give you sort of the opposite, in which a 25-year-old single woman, LM, was in a rear-end collision and had a whiplash. She developed a phobia of cars and enclosed spaces. Her physical injuries cleared, but she had panic attacks and phobic symptoms and could not drive. When she was seen by myself she was diagnosed as having a phobic disorder with panic, secondary to the car accident trauma. It was felt that this was transient. She only had a mild to moderate psychological trauma. She returned to work after a period of treatment and after psychotherapy and medication of about one year. Her neck healed well, she began to drive cautiously. She still has periodic bursts, but she is heading for improvement and mastery. So the opinion there is that there would be no permanent psychological sequelae to that case.

I give that to you as an example on the other side, but my point is that one should give some attention to that aspect when one is evaluating trauma. That is the current state of psychiatric thinking within North America. Indeed, in the diagnostic and statistical manual of the American Psychiatric Association, known as DSM-3R, there is a diagnosis which is called post-traumatic stress disorder and it is exactly that condition which has been labelled in which there is a whole host of psychological symptoms and psychiatric syndromes which can occur secondary to a trauma, so it is recognized as a definable entity.

Mr Kormos: Thank you, doctor. One final and brief question. What that means then is the severity of the physical injury, the severity of the physical trauma, is not necessarily the precursor to significant psychological harm.

Dr Yaworsky: No. I can give you another case of a woman whom I have seen, who had, in a head-on collision, multiple fractures of long bones—face was smashed, steering wheel in the face—who has undergone cardiac injuries, intra-thoracic injuries, who was saved because of modern medicine really, who has undergone over the last three years multiple surgical procedures of all various kinds. I see her because of depression and pain.

Now, in that case one could well understand, even the casual observer, that with a number of procedures—she has had a new procedure every month, orthopaedics, over the last two or three years. One could well understand why that person would be depressed or have pain or not be functioning. In that case there was a massive external trauma, but this is not necessarily so. As in case illustration 1, the trauma in itself was not that massive. So it does not necessarily follow that the extent of the external precipitating factor, the trauma, will determine the extent of the psychiatric injury. That is going to depend on multiple other factors.

The Chair: Mr Runciman, you had indicated earlier. Did you want back in?

Mr Runciman: No, I think I will refrain.

Mr J. B. Nixon: Thank you for appearing today. I appreciate your coming and appreciate your testimony. One of the concerns I have is that, as you present your various cases to us, or a couple of cases, in each case there has been some form of serious injury, and we have heard much testimony from lawyers to the effect that determining who passes the threshold and who does not will require extensive litigation and there will be some debate, and serious issues have to be raised before the court before deciding that. Yet when you very briefly describe a case and Mr Kormos says, "It doesn't get past the threshold," somehow we have dispensed with all that legal argument, all that discussion and concern, because the two of you have just decided that it does not get past the threshold. I wonder how you can do that when we have heard so much evidence about the serious principles of law that will have to be argued before a judge to determine whether or not you get past the threshold.

Dr Yaworsky: Certainly I—

Mr J. B. Nixon: You are not a lawyer, first of all.

Dr Yaworsky: No, certainly, and I do not speak to any legal issue at all.

Mr J. B. Nixon: Having said that, you really could not tell us as a doctor whether or not your client gets beyond the threshold.

Dr Yaworsky: No, I cannot tell you whether the client gets beyond the threshold. I am only addressing the issue to bring to the committee to still give consideration for whatever that threshold might be, that some attention be given to the psychological aspects of the trauma, that is all. Certainly even now in any of these cases that I mentioned, if they would come up for any

litigation or come up before the court, my evidence certainly is not necessarily accepted.

Mr J. B. Nixon: I understand.

Dr Yaworsky: It would be certainly up to the trial judge, jury and so on.

Mr J. B. Nixon: My second question is, do you as a medical practitioner find the litigation environment, the adversarial climate, in which frequently lawyers are concerned about demonstrating the severity and seriousness of their clients' injuries, where they have to be dramatized in a courtroom and where there is opposition and people are denying, in some cases, that there is any pain, that there has been an injury, do you find that environment conducive to the psychological, emotional rehabilitation of your client?

Dr Yaworsky: No, I find it very traumatic to them. Unfortunately—I should not say "unfortunately"—from a psychiatrist's standpoint or from any medical practitioner's standpoint, we do not deal well with an adversarial position. We are more concerned about what is the best type of treatment or management to be done for the patient. Our concern mainly is for recovery of the patient.

Certainly very often if the case does go to court, physicians and psychiatrists do find themselves in a strange environment. We find the adversarial process itself stressful, and if it is stressful for us, it is certainly stressful for the patient, because each time you go through something like that, of course it revives or keeps bringing up to the trauma that he has gone through. So the sooner we can get beyond the litigation process and continue with rehabilitation and treatment, that would always be more positive in that way.

1020

Mr J. B. Nixon: In your presentation to us, you suggest that if we were not to include psychological, emotional or mental injuries as considerations in assessing a person's disability, that would be discriminatory. But I suggest that if you look at the lengthy schedule of no-fault benefits, many of which did not exist in the past—although some of them did at a much reduced level—for instance, long-term care, the identification of rehabilitation, the identification of medical—I forget the term, but that medical treatment includes psychological treatment—new definitions, expansion of those definitions, there has been a real recognition of the need to care for and provide service to mentally disabled persons, whether temporary or permanent.

Dr Yaworsky: Certainly if those are included in the package, as you are saying, if being included in that package there is certainly much attention and strong consideration being given to the psychological and psychiatric effects of the trauma, then I am very heartened to hear that.

Mr J. B. Nixon: Perhaps, because I know other members of the committee may disagree with me, I could ask the ministry officials to either concur or disagree with what I am saying.

Ms Parrish: It is very clear in the no-fault schedule that full payment is provided for psychological injury. In the case of the gentleman who was unable to work even 10 years after his injury, he would be entitled to income replacement for the 10-year period and would be entitled to the therapeutic drugs that were required for his treatment and, last, would also be eligible for the full cost of psychiatric treatment. Of course, I know that most psychiatrists are covered by OHIP, but many psychologists are not and that would be payable under the no-fault schedule.

Mr Kormos: Full income replacement?

Ms Parrish: He would be entitled to the income replacement of \$450 a week topped up from any other disability plan to the total of 80 per cent of gross income.

The Chair: Thank you, doctor, for your presentation. It has been helpful.

From the Middlesex Law Association, we have Mr Pensa. Good morning, sir. We have half an hour. I do not believe you have any written material, so if you could leave some time in the half-hour for some comments, questions and discussion, I am sure the committee members would appreciate it.

MIDDLESEX LAW ASSOCIATION

Mr Pensa: I would be delighted to do that. Just on the last point, Mr Chairman, if I might. What this bill says is that the person who is psychically injured and unable to work would receive \$450 a week plus psychiatric care.

The Chair: Is that accurate?

Ms Parrish: The individual would be entitled to 80 per cent of his gross income. Whether or not he got \$450 would depend in part on what other collateral source he had.

Mr Pensa: Ignoring the collateral source, the maximum he would be able to receive is \$450 a week.

The Chair: Net dollars.

Ms Parrish: From the Ontario motorist protection plan.

Mr Pensa: Yes. So if there is an economic loss, a truck driver who is making \$45,000 and has no other benefits spends the rest of his life on \$450 as an innocent driver.

Mr J. B. Nixon: Unless he bought more coverage.

Mr Pensa: Of course, unless he bought more. I thought we were talking about an insurance scheme here. He has to go out in the marketplace and buy things.

Mr J. B. Nixon: It is still a market scheme, unfortunately or fortunately. If you favour public, say so.

Mr Pensa: I favour public and I favour people knowing what they are not getting out of your scheme and have to go out in the marketplace to buy. That is what you are not telling people.

Let me begin at the beginning. I have been a professional for 34 years. My experience has been in the field of insurance, acting for insurance companies, acting for injured parties. I have studied the field of accident compensation. I have worked in all aspects of the law of tort which has taken about 250 years to build up to its present stage.

Last, but not least, as a person who has been a committed Liberal most of my life, I direct my remarks in a more pointed way to the Liberal members of this committee. In saying this, I mean no disrespect to other members of this committee, but it is not your bill; it is not your government. For what it is worth, I am sending a message to you members of caucus whom I respect through to your government. I have spoken to Murray Elston. I have spoken to the Premier (Mr Peterson). I am not convinced that my submissions have been heard or taken account of.

I am one of the founding members of the Committee for Fair Action in Insurance Reform. The FAIR committee, in my opinion, has not been dealt with fairly, so I am urging you and members of this committee to come to your own independent conclusions about this legislation. This committee, by the end of this process, will have heard from the people of this province and you will arguably be best able to decide.

I hope that these hearings have been helpful and instructive, that you will fearlessly and forcefully send a message back that this legislation should not stand as it is, that it is in the public interest that it change, because people to whom you have a responsibility, people who do not appreciate that their rights are being taken away, will be hurt, young people, old people, workers, families, none of whom are aware at this point in

time that they in the future will have need of the protection of an insurance system and it will not be there.

So it is to you I speak, members of the Liberal caucus, and I speak to you because if you allow this legislation to pass in its present form, in my opinion, this bill will hang about your neck like a millstone and about the neck of your government. Is a citizen's interest better reposed in the hands of a bureaucrat than in the hands of an independent judiciary? If this bill goes through, you will suffer the loss of support of decent, honest people who know that you will have made a mistake and done wrong to countless people.

Let me go back a bit. Ever since this issue arose, I personally and lawyers in general have been faced with the accusation that we have no real status to speak to this issue because we have self-interest in mind, which is something like saying that doctors should not be heard to speak about medical care or engineers about engineering. I think lawyers have a right to speak about justice.

The same rule does not seem to be applied as far as the submissions of the Insurance Bureau of Canada are concerned. Theirs received red-carpet treatment from this government, and the legislation as it stands is gold-carpet treatment to the insurance industry. You as legislators understand that in relation to what you do you have to listen to citizens. We as lawyers understand what we have to do for our clients.

Ontario at the present time has the finest, fairest and most efficient compensation system certainly in Canada and probably in the world. No one is opposing a no-fault system. We have a no-fault system now. The present auto policy pays accident victims regardless of fault. The present medical and hospital benefits and weekly indemnity are insufficient and have been insufficient for some time, and we have been telling you that for years.

Subject to the amounts, it is a very good system. It is a system that does not compromise anyone's rights. They can resort to the justice system for their noneconomic losses and their uneconomic losses over and above the present no-fault benefits. We have compulsory auto insurance. We have uninsured and underinsured motorist coverage. It is a system worthy of the largest and wealthiest province in Canada. That system should not be radically disturbed, but should be reformed to accommodate and reflect the social transition over the past 10 or 15 years. We have been telling you that as well.

1030

Insurance companies should operate in a competitive market within the structure of laws that protect the public interest and protect insurance coverage at reasonable cost. Insurance companies must, within the normal limits of competition, be allowed an opportunity to make a profit. We need a healthy insurance industry, and I do not think the insurance industry fully realizes and certainly the public does not fully realize that this legislation, over time, will debilitate the insurance industry itself.

The government's failure to act in a timely way to reform the system, without disturbing its underlying structure, has led to delay in implementing cost savings and thereby aggravated the problem. You knew that certain reforms to the tort system were proposed as early as four years ago and you failed to act, and now what you are doing is overreacting by interfering fundamentally with a system that has a capacity to work well.

You have studied it as a system through Osborne, through Kruger and ignored most of what those studies revealed. Osborne said the Ontario system was the best probably in the western world. No one carried out a more careful examination of an insurance system. His recommendations were many but he certainly did not include a recommendation that peoples' rights to adequate compensation and access to the justice system should be taken away from the public.

Nobody walking down Ouellette Avenue today or Dundas Street in London or Yonge Street in Toronto or any street in small-town Ontario can possibly be made to realize that he or she can be in an accident tomorrow. An accident is something that always happens to somebody else. So you have to look after those people. You have to let them understand that it is necessary for the protection of the breadwinner in the family, for the protection of their husband or wife and children and their family that they need an adequate protection system.

Your plan takes away the right to receive compensation beyond no-fault except in the case of death, permanent and serious disfigurement and, listen to this one, permanent, serious impairment of an important bodily function caused by continuing injury which is physical in nature. How are you going to get by that one? Even your own minister says that it will eliminate 90 per cent to 95 per cent of all injury claims.

This is the tightest wording of any threshold plan that has ever been conceived. You have screwed it down so you are going to eliminate 95 per cent of all persons who would normally be

entitled to claim. You went very close to going all the way. You have eliminated under this legislation resort to damages and resort to an impartial judicial tribunal. Let the bureaucrats decide what should be done with assessment of damages.

Mr Nixon was asking the previous witness about whether he was intimidated by the adversarial atmosphere of a courtroom. If we do not think it is appropriate to have peoples' rights decided in the courtroom, why do we not turn over the criminal law to bureaucrats as well?

Workers should be against this legislation. Families should be against this legislation. People on workers' compensation should be against this legislation. Schoolteachers, self-employed people, farmers, students, homemakers should all be against this legislation as it stands. Liberals are against this legislation. Two ridings, I am told, in Sudbury have passed formal resolutions. They are not lawyers talking; they are people in all walks of life.

You are trying to put in a system that everyone else has rejected. The state of New Jersey, as I understand it, just threw out a no-fault system. I am told also that one of your own members here is opposed to this system. The reasons why they threw it out in New Jersey are familiar. As predicted, it inflated everyone's insurance costs and eliminated the economic incentive to drive safely.

The Insurance Bureau of Canada figure in 1988 is that the insurance companies lost \$400 million. My information is that they lost something closer to \$90 million to \$100 million in 1989. They are getting \$140 million from the government as a result of the legislation regarding OHIP and the premium tax. All of these reductions are without any of the impact of tort reform, including the 2.5 per cent prejudgement interest on all causes of action arising after October 1989, enforced structured settlements, legislation concerning collateral benefits, etc. We are surely talking of savings of hundreds of millions of dollars. So between OHIP and premium tax, the government is getting rid of \$143 million, and you put that on top of tort reform.

I recognize that as governments behave, once they put a bill on the table, it is not going to go away. I cannot see this government having the courage at this stage to pull that bill and come out with a whole new bill.

First of all, I suggest that the strict and punitive wording of the threshold has to go. I would like to see the threshold go. You should have been

working at the other end and getting rid of the so-called nuisance claims. The FAIR committee suggested a deductible, which would have worked fine and you would not have had to get involved in this whole mess. But as a minimum, you have to soften the wording of the threshold.

Secondly, clearly you cannot discriminate against those who suffer a psychic injury. It is just absurd to suggest that you could do that. Psychic injuries are a recognized medical phenomenon and they are fairly common.

Thirdly, you cannot deprive an individual on a fault basis from recovering the total amount of his economic loss. You cannot tell a truck driver who is supporting a family, earning \$45,000 to \$50,000 a year, that he has to be satisfied with \$450 a week.

Those are my submissions. I thank the committee for its attention.

The Chair: I have Mr Runciman, Mr Kormos, Mr Nixon and Ms Oddie Munro, but first I have Mr Ferraro on a point of clarification.

Mr Ferraro: On a point of clarification or information, you are absolutely correct that the threshold would result in the elimination of approximately 90 per cent of current court cases, but I wish to point out to you and to the committee—and you may know already—that the remaining 10 per cent would, by last year's statistics, amount to about 50 per cent of the claims. Last year's statistic, as you know, was \$1.8 billion. We estimate that indeed, although only 10 per cent of the claims would go through because they were of a serious and permanent nature, it would result in approximately 50 per cent of the awards still being received by the insurers.

Mr Kormos: He is talking dollars, not people. Oh, dollars. Let's talk people.

Mr Pensa: Obviously that would deal with the larger claims, but it is the tiny majority of the persons who are injured. What about the poor fellow or lady who falls just this side of the threshold? One will get a highly enriched level of benefits and the others will get nothing. They get no nonpecuniary damages, they do not get full income loss or income replacement, etc. Why you discriminate against those people is totally beyond me.

Mr Ferraro: It is not my place on this committee to discuss or even accept. I wanted to make those facts available.

Mr Kormos: Retreat, Rick. Do not be embarrassed. You can retreat. Fess up.

Mr Runciman: I appreciated your opening comments when you suggested you were going to really direct your remarks to the Liberal members of the committee, and that is understandable. I have certainly been trying to appeal to their consciences over the period of these hearings as well, without much success I am sorry to say.

Mr Kormos: Oh, a little conscience.

Mr Runciman: You talked about the FAIR organization not being treated fairly. In fact the minister, whom I personally like, made some very uncharacteristic remarks in his opening statement to this committee when he lashed out at the FAIR organization.

Mr Kormos: He crapped all over them.

Mr Runciman: He crapped all over them, right, and over virtually every other group, organization and individual who had some difficulty with this legislation.

1040

With respect to whether or not Liberals are listening, I do not believe the Liberals in this committee are listening. We see that, as I said earlier, in respect to the questioning of witnesses like yourself. We hear essentially the same kind of arguments and positions being placed, despite the kind of expert testimony that we hear on a daily basis.

You mentioned the two riding associations and the fact that you have been a long-time Liberal yourself. I would suggest that perhaps in the Windsor area that may be an approach that could be taken at the grass-roots level: that you start approaching the Liberal riding associations rather than the members who are so caught up in their own personal ambitions to take independent stands on this issue.

We saw that essentially with even Mr Campbell in Sudbury, who apparently is even going to defy his own association. That is an avenue that perhaps you and others in the province have not explored as well as you could. Maybe that is a start to encourage some of these members to take a more objective and independent approach to this legislation and its implications.

There was a very telling comment earlier on by Mr Nixon when you talked about the \$450 limitation. His response was, "I can buy extra coverage." That is very telling when you look at this legislation. In effect, it is not only discriminating in terms of the threshold and the elimination of psychological injury and so on; it is very clearly discriminatory in respect to the poorer people in this province, the less fortunate

people in this province who are not going to be able to do what Mr Nixon says: "Go out and buy some extra coverage. Let's line the pockets of the insurance industry even further."

I have said that really this whole thing lies at the doorstep of one gentleman, a fellow from London by the name of Peterson, who made a very irresponsible promise in 1987 that he had a specific plan to lower automobile insurance rates.

Mr Pensa: I wish you fellows would not have held him to it.

Mr Runciman: We would not have held him to it?

Mr Pensa: Yes. If the Tories and the NDP had not held him to it, maybe he would not have come up with this plan.

Mr Runciman: If he makes a promise, I guess we expect him to try to keep it. He has certainly done anything but that. In fact, we have had nothing but chaos in the auto insurance industry in the past two and a half years. I think you will share that view.

As a result, and I went through this process with the standing committee on administration of justice on Bill 2 bringing in the regulatory authority, with all the expert witnesses appearing before us saying it was going to be a chaotic situation, with evidence indicating that the only other jurisdiction that had gone this route, Massachusetts, was in dire straits, despite that testimony, the government pursued it, Mr Elston pursued it, in terms of the risk classification changes which were going to result in 70 and 80 per cent increases.

He was told that 10 months before those changes were brought into effect. Then, at the last minute, he had to back down and in another ad hoc, seat of the pants response come up with product reform, which is now, as you suggest, clearly going to hurt the vast majority of Ontarians.

There was another comment in the press this morning where Mr Elston is saying that only about 10 per cent of Ontarians are ever going to be in an accident. I think the government and governing members are clearly depending upon that view, as you expressed it here, that most of us do not think we are ever going to be in an auto accident so we do not perhaps get as concerned about the implications of these kinds of changes until they do impact on us, on a member of our family or perhaps a close friend.

I guess I am just urging you, as a long-time Liberal, as you have indicated here today, that perhaps you could play a more activist role

within the grass-roots movement of the Liberal Party, because we are certainly not making much headway with these fellows.

Mr Kormos: I will mention briefly that the reality is that this committee and the Liberal members are going to put forward amendments and they are undoubtedly going to tinker with the threshold. They are undoubtedly going to tinker with the no-fault schedule in an effort to create an illusion of responsiveness, whereas in fact what has happened from day one is that it has been highballed.

What has been proposed in this legislation is more than what the insurance industry even dared ask for, so there is room there for the government to tinker with it and appear to be responsive, yet at the same time maintain a threshold that is unconscionably high.

Rick Ferraro, the parliamentary assistant—I am glad he is here because I want to say that he is a nice person.

Mr Pensa: He certainly is.

Mr Kormos: I feel badly. What happened on almost the first day this committee had its public hearings was that Murray Elston, the minister, came out here, and boy, like you were told already, he crapped all over the Committee for Fair Action in Insurance Reform, he crapped all over Ralph Nader, he crapped all over John Bates, the president of People to Reduce Impaired Driving Everywhere. I could not believe it. None of those people was in the audience. Murray Elston was here crapping all over them. When those people did appear in front of the committee, Murray Elston was nowhere to be seen and he has not sat with this committee since; not one day, not an hour, not a minute.

What does he do? He sends poor Rick Ferraro, one heck of a nice guy from Guelph, with a wife and kids—

Mr Ferraro: A mother-in-law.

Mr Kormos: —and who has the potential for a political career, he sends him to this committee, making him apologize—you want to talk about crappy—for the crappiest bit of legislation that this House has seen in a long time. I feel sorry for Rick Ferraro, having to apologize persistently, day after day after day, for Murray Elston's bad design.

In fact, these guys hammer away at the role of lawyers and the delays. My impression is that if the insurance industry had its way, it would be into hospital emergency rooms having victims signing releases while they are still lying bloodied on gurneys. Is it not the case that the—

Mr J. B. Nixon: What are gurneys?

Mr Kormos: What are gurneys? Ah, geez, that is pathetic. Holy bunkers. I do not believe the lack of intellect from the other side.

In any event, lying on the gurney, they would have them signing releases right then and there.

Mr J. B. Nixon: I still do not know what a gurney is.

Mr Kormos: I know you do not. That is your problem. Buy a dictionary. If not, I will lend you mine.

Is it not the case that the insurance industry indeed looks forward to speedy settlements because injuries have not manifested themselves to their fullest?

Mr Pensa: I expect insurance companies to look after their own interests, as they are entitled to do, and I expect the government to look after the interests of the public.

Mr Kormos: In terms of the cases that have to go to court, is it because the insurance industries are reluctant to settle?

Mr Pensa: The judicial system is there to act as the arbiter between insurance companies and the public, and the system works well. You can criticize insurance companies in certain respects, and perhaps on occasion claimants are asking for too much. That is why we have judges and that is why we have juries and that is why the system has worked well for a couple of hundred years.

Mr Kormos: These guys also talk about fault and people who are at fault being entitled to no-fault benefits. All of us agree with no-fault benefits. I do not think there is a single person in the province who would deny the need for a realistic level of no-fault benefits.

Do you have any difficulty with the fact that while the person who is at fault should get no-fault benefits, he may not be entitled to compensation for pain and suffering and loss of enjoyment of life? The person who is not at fault should be entitled and there should be that distinction.

Mr Pensa: Of course.

Mr Kormos: Do you think the public has any difficulty having that same position, recognizing that a person who is innocent should be entitled to some compensation and a person who is not innocent may not be entitled to?

Mr Pensa: I think the public, if it fully understood that the innocent driver is going to be deprived of substantial benefits under this system, would certainly be very much concerned about it.

Mr Kormos: The Michigan experience, we are told, is somewhere in the mid-90s in terms of the number of innocent victims the threshold has excluded.

Mr Pensa: It is a much softer wording than what is in this bill.

Mr Kormos: That is right, and that threshold is less onerous, so would it not be realistic to conclude that the threshold this government is proposing will exclude even more people than Michigan, which has placed it into the mid-90s, possibly the high 90s?

Mr Pensa: I am sure that is the case. I think our courts would have to follow precedents in other jurisdictions, as they do in other areas of the law. If there is no judicial history with respect to a certain statute, they look to other jurisdictions. In this case, it would be logical to look at jurisdictions such as Michigan and other places where they have or had threshold to assist them in interpreting the wording.

1050

Mr J. B. Nixon: Thank you for appearing, Mr Pensa. As I am sure you are aware, many of the things that you have said we have heard before. In fact, it has been a repetition of representations we have heard in Thunder Bay and will hear, I am sure, in Ottawa.

Mr Pensa: I am glad the committee is focusing on the problem, then.

Mr J. B. Nixon: Certainly that is what we are here to do.

I have a couple of questions. One of the arguments I hear constantly reiterated is that there is a \$143-million gift to the insurance companies which I as a taxpayer, not to say a Liberal—I will say it as a Liberal—would have real problems with if that is what was occurring. Frankly, it astounds me when I hear what is really happening and what the legislation requires.

I say there is no gift there. What is happening is that those savings flow through to the consumer in terms of premium reductions, because every insurance company, when it files its rates with the commission, is specifically required to disclose the impact of the elimination of the premium tax and the elimination of the Ontario health insurance plan subrogation, and if the companies do not disclose that or cannot show or demonstrate that it has meant a premium reduction, then the rate filings are not accepted and they cannot raise insurance.

That is the explanation I hear; that is what is in the legislation. I have a problem with that, because the benefit is to the consumer. You are a

Liberal, you are a taxpayer and you may not have heard that before. But other Liberals and lawyers, who are bright people on the whole, hear that and they say: "It is not true. It has got to be a gift."

Frankly, the issue has gone beyond, "Let's talk about this rationally." It has gone into Mr Kormos crapping all over everyone he disagrees with; it has become a Punch and Judy show. The logic of the discussion has been lost. On occasion you make fair points, on other occasions I disagree with you, but somehow we cannot even talk about it any more because I hear you say, "It is a gift to the insurance companies."

Mr Pensa: I am not sure if I used the word "gift," but in any event, all I was pointing out was that it is a fact that there has been a remission of the premium tax.

Mr J. B. Nixon: That is right.

Mr Pensa: It is a fact that the insurance industry has been relieved of the OHIP premium contribution—

Mr J. B. Nixon: That is right.

Mr Pensa:—and that those two items together amount to about \$143 million. I am just putting that on the table and saying that is a fact. I am not drawing a lot of conclusions from it; I am just saying that has helped and undoubtedly will help insurance companies which in the past have lost money. They have to be allowed to make money in business within the competitive field.

I think this legislation is going to eliminate competition in the insurance field. The bigger guys will get bigger and the smaller guys will get squeezed out. I think that is unfortunate and unhealthy and it is the result of the government getting involved in the insurance business instead of regulating it. I think it was an error on the part of the government to get involved in controlling rates. They should regulate the industry and let competition deal with who can provide the best insurance service within the ambit of a good regulatory scheme.

Mr J. B. Nixon: Let me ask another question. I am confused, because at the beginning you said to us that you preferred public auto insurance and now you are saying—

Mr Pensa: No, no. I did not say any such thing, I am sorry. I said auto insurance that is not—

Mr J. B. Nixon: Do you want to correct the record? Because that was the clear implication of what you said.

Mr Pensa: No; someone misunderstood, or I misunderstood the question. I am saying the

responsibility of government is to regulate insurance for the benefit of the public, but it certainly is not my position that the government should get involved in public insurance.

We have a healthy insurance industry out there. The one problem has been the auto field. That has been largely a result of failure to regulate in a constructive way and the insurance industry will tell you, I am sure, that its problem is Metro Toronto and under-aged drivers. It needs to be brought up to date. But do not throw out the baby with the bathwater, and that is what this legislation does. I would rather it not have been involved in regulating rates at all. The best rates are those that are competitive within a good competitive marketplace.

Mr J. B. Nixon: As you very well know, rate increases in 1985, on average, were in excess of 20 per cent. The same thing occurred in 1986 and was certainly predicted in 1987 when the government intervened with rate caps. You seem to be saying that the government should not have been concerned at that point because there had been no intervention and no rate board at that point.

Mr Pensa: No, they should have been very much concerned, but their intervention should be of a different order. There were recommendations back then for tort reform which the government failed to act on, and the rates were coming through a cycle at that time. You look at rates and at insurance companies' losses segregated for automobile insurance only and you see that those losses are beginning to moderate. When the full impact of tort reform comes into effect and when the abuses in the system are corrected, there will be a good marketplace out there.

You notice that all through that 1985 period almost no insurance companies went out of business. None of the larger, more stable companies went out of business; they all stayed in the business and they all kept writing. They know there is a cyclical nature to the insurance business and it is no different from any other business.

Mr J. B. Nixon: I am just not persuaded that tort reform would have done the trick. Justice Osborne obviously recommended many elements of tort reform, but he did not suggest they would certainly eliminate the existing rate inadequacy, which the Ontario Automobile Insurance Board found to be in the order of 30 per cent. His cost-saving recommendations for tort reform alone were much lower than the 30 per cent rate inadequacy.

The Chair: I am going to have to jump in here and thank you very much for your presentation.

Mr Godard, welcome to the committee. You have 15 minutes. I do not know whether you have a written presentation. If not, we will get copies of it when we get copies of Hansard. If you want to identify yourself and the gentleman who is with you for the benefit of Hansard and then leave some time for questions and comments, we would appreciate that as well.

RODNEY M. GODARD
TERRY WELCH

Mr Godard: I do have a brief submission that I propose to file. My name is Rodney Godard and I am a lawyer in the city of Windsor. The gentleman beside me is Terry Welch, who is a practising lawyer in the state of Michigan. Of course, the committee has heard and will hear, I suspect, from a number of Ontario lawyers involved with the motor vehicle compensation system in place, and rather than simply repeat what you have no doubt heard before, I thought it would be of benefit to hear from Mr Welch, who has extensive experience with a no-fault system in Michigan and who I think may be able to point out some of the pitfalls with the proposed legislation in Bill 68.

1100

Mr Welch: As Mr Godard indicated, we have had experience in Michigan for around 16 years, since our no-fault system went into effect, with a threshold system similar to, but not quite like the one you are proposing here. I come here as a neighbour with the understanding that maybe if you look at some of your neighbour's problems and see what problems Michigan has had with this type of system, you can learn, and hopefully it will cause you to make some changes with respect to your Bill 68.

Just as a little bit of background, I am somewhat familiar with the Canadian judicial system although I am not licensed to practise over here. I am involved quite a bit with the Paroian law firm and as a result have been to Toronto, have been here to court several times and am somewhat familiar with your practice.

The reason I bring that up is that I notice under your proposed bill the issue of threshold would be up to your judges to decide on motion, and I come before you admitting your system is better geared for that type of analysis. Your judges are better. You do not have the docket congestion over here. Things seem to be much more thorough in terms of Canadian motion proceedings. Your judges over here can hear and take

evidence and decide facts on the evidence, whereas our judges cannot. So I come before you saying that a threshold system in general, with your system, might work over here as compared to ours.

Ours gets bogged down because of the jury system. We have this inalienable right-to-a-jury issue on practically everything in the United States. As a result, our system is not working because 80 per cent of those cases that come before our courts are in the grey area where you cannot sit any three Michigan attorneys down and come to any kind of consensus as to whether there is a threshold.

What is happening is that in the city of Detroit, where the juries are much more liberal and tend to give away greater amounts of money, it is much easier to prove that you have suffered a threshold injury, whereas in out-state Michigan, these people are being shut out of court, with the jury finding that there is no threshold. So I come before you with the understanding that your system might be better geared towards that analysis.

It is just that the threshold definition you have proposed in Bill 68 is extreme. I say in my written submission that what you have done is eliminate all but the catastrophic and near-catastrophic cases. The only reason I call them near-catastrophic cases is that there is some argument among the people involved with those cases whether they are catastrophic or not. I do not know what exact percentage it is you are talking about here. Ted Rachlin has talked about 95 per cent and so on. I think that it is probably in the 90 per cent range of the people whom you are going to be precluding from court.

More important, the average serious car accident that results in injury requiring medical treatment is the type of case that is not going to pass your threshold. A person could have a 35-mile-an-hour broadside collision, broken ribs, ruptured spleen, broken ankle, and in accordance with your definition, this strict, harsh definition, if that injury is resolved and if it is still not continuing, that person is shut out of court and cannot prevail.

The reason I think our system works to some extent in Michigan is that we came into it with a totally different medical background. In the 1970s in Michigan we had a situation where—we do not have any kind of comprehensive health care; we do not have OHIP, nothing like that—we had people who were running around with \$20,000 and \$40,000 policies, and half of them were not even insured. When the Legislature of

the state of Michigan held out a carrot to our people and said, "Look, we are going to give you unlimited medical treatment for the rest of your life"—no \$500,000 cap such as there is over here with your proposed Bill 68. When we did that, we were giving people something in exchange for the tort immunities we were taking away.

I have studied no-fault systems in different states and different provinces and it seems to be that you have to achieve some kind of balancing between the extra benefits you give to people in comparison to the balancing of the rights you take away in terms of their tort rights. It does not seem to me, and admittedly I am an American from Michigan, that you are really offering the people over here anything they have not already had through OHIP. It seems to be somewhat of a plastic carrot that is being tossed out to the people. To that extent, I disagree with your proposal and I have some real problems with your proposal.

Also, as a Michigan practitioner, I am going to be directly involved in this in the Michigan courts and it is an issue that I would like to address as well. It is a conflict-of-laws issue which I think needs to be resolved from your end politically or it is going to come back to haunt all of us, and it has to be resolved. Michigan has a less stringent system. We do not have any permanency requirement. We can have mental injury claims. We do not have this "of a physical nature" business or that it be continuing.

What happens when I defend Canadians in Michigan litigations as a result of Michigan auto accidents is that our judges now apply the Michigan standard, which admittedly is a softer standard. However, you in your legislation say right in the front end that this will apply to accidents that occur anywhere in the United States of America. You have a section in there, section 11 I believe it is called, which says basically, "A foreign judgement from Michigan will not be enforced in Michigan unless it has been handled in Michigan in accordance with our new tough threshold standards." Our Michigan judges are not going to apply that law. They are going to apply the Michigan law.

Normally what happens with a conflict situation such as that is we have treaties, statutes and so on that resolve these issues, but you have kind of backed out of it. You are asking for some real problems. I was over here a year or two ago before Mr Justice Osborne and I noticed in his findings that he said something like, "We do not want to be an importer of a compensation system." Yet what you have done with this harsh,

strict language in your threshold standard is that you have brought the worst of all the neighbouring states and provinces into Ontario. You have imported the best of the worst, if you will, and I think you really need to look at the actual standard that has been adopted. I think there are going to be some real problems.

For instance, what does "permanent" mean? In other words, how much does the injury have to resolve before it can be called "permanent." What if a person still has significant residual symptoms but it is resolving, is getting a little better. Does that mean it is not permanent? In terms of this "continuing" language that you have in there, I think that is going to cause you litigation experience and all kinds of problems, based on the Michigan historical perspective. Continuing to when, continuing to what extent?

Then the language requirement I have the most difficulty with is that the injury be "physical" in nature. To me that means that you can go to your insurance company and you can get coverage for a mental-type injury, but you cannot take it to court against the tortfeasor who caused your injury. To me that is like saying to the mentally injured person, "We just don't believe you and we think your claim is somewhat fraudulent."

The real problem, and again I am basing this on some similar Michigan cases that I was involved in, is that you say the guy with the psychiatric injury cannot make a claim against the tortfeasor, yet you say that if he gets a judgement against the tortfeasor for his physical injuries, you can then reduce his judgement by the amount of psychiatric treatment benefits that he has already received. The guy who has the misfortune of having a psychic-type injury gets shafted twice and I guess I do not understand the purpose of that.

I am here to answer any questions you have in terms of the Michigan experience. We found that premiums went way up. We found that it did not result in less litigation, that it resulted in more litigation. What happens is that the fight then becomes between the claimant and his insurance company, so there are just as many lawsuits now regarding termination of benefits, definitional guidance in terms of rehabilitation, what is required by rehabilitation and so on. So it is a myth that we have had insurance that has lower premiums and less litigation.

I think that from the catastrophic standpoint in Michigan it is a great situation, what we have now, because I, for instance—my best friend is a quadriplegic from an auto accident. In the old days he would have got \$20,000 from the other

driver and then been given minimal medical treatment by society, be on welfare and so on. That person now, my friend, is getting good medical treatment, but he is a clear catastrophic case. He would meet your threshold. It is the 95 per cent of the people who are walking around with pain and suffering who I worry about, because those people are not going to meet your threshold. I would urge upon you to soften your threshold standard or get rid of it all together, and at the same time back out of the legislation in some of these conflicts of laws, jurisdictional issues which are just asking for trouble.

1110

Mr D. S. Cooke: I just have one question. As an MPP from a border city I have certainly read in some of the Detroit papers concerns that have been expressed about insurance rates in Michigan. Can you give us some indication of what has happened to insurance rates over the last 16 years, since Michigan brought its no-fault system in in order to lower rates.

Mr Welch: I can tell you from my own personal experience that my rates have gone up over 100 per cent between 1973 and the present and yet I have a clean record. I have no accidents, no claims and the cars I am driving now are not really worth significantly more money in terms of the collision damage aspect of it than they were in 1970. I think that one of the big things you might be missing as a result of the whole Bill 68 analysis is that you are not going to control collision damage costs as a result of this bill. That is still a fight that has to be made with different legislation. So part of it is that our premiums have gone up because we have a better medical package, which we did not have before, and they have gone up significantly, no question about it.

Mr Kormos: You used the phrase "tort immunity" when you talked about the threshold system.

Mr Welch: Yes.

Mr Kormos: You see, these guys have been calling it a no-fault system because it is easier to market it. I mean, no-fault is like new, improved Tide. In fact it is full of fault and we know that. The real word is "threshold." You used the words "tort immunity."

Mr Welch: Right.

Mr Kormos: That is a lawyer's kind of phrase. I am wondering if maybe you could help us. My interpretation of that means that what this legislation does is that it protects the person at fault from being held to blame. Is that what tort immunity implies?

Mr Welch: Our statute reads a little differently, but it basically means the same thing. What it means is that you are immune from tort judgement in Canada unless the person who sues you can prove that he has suffered a permanent serious impairment of a bodily function caused by a continuing injury which is physical in nature. Our statute reads differently and it basically says that you, as a defendant, are immune from tort liability unless that person who sues you can prove a threshold injury.

Mr Kormos: This is immunity for the drunk driver, for the careless driver, the reckless driver.

Mr Welch: Absolutely, regardless of fault and so on. That is what really bothers me about your legislation, that the majority of car accidents do not occur on the freeway and result in catastrophic injuries. The majority of them are accidents that occur within towns, the 35-mile-an-hour range and so on, where people have some real, significant injuries, yet they do resolve. Under your system, your Canadian drivers are going to be basically granted immunity from almost all but five per cent of all car accidents.

Mr Kormos: The bad drivers are going to be granted immunity.

Mr Welch: Yes, the bad drivers will be granted the immunity.

Mr Kormos: And the good drivers, the victims, will get screwed.

Mr Welch: The victims will suffer, absolutely.

The Chair: In your answer to Mr Cooke you mentioned that the premiums went up because of the increased medical benefits. Would you be able to provide to the committee, via whatever means, facts and figures that you could share with the committee in terms of premium increases, broken down in terms of, as you said, due to medical components, threshold components and the motor vehicle collision, if you have them?

Mr Welch: In terms of my own experience it seems as if approximately a third of my premium bill has increased because of increased cost for collision coverage, but the main reason my premiums have gone up is the fact that it is much more expensive in Michigan for an insurance company to provide these benefits. It is a little different than you have over here, now, because I am not so sure what this \$500,000 is going to cover.

I have been involved in some cases involving Canadians that occurred in Michigan that have been the subject of some great dispute because of filings over here in Canada as well. The point is

that this claimant is catastrophically injured, has had over \$4 million in medical treatment and until the time she was moved home from the hospital in Toronto, Travelers Insurance Company had not even paid out \$25,000 to this lady. It was only because she moved home and modifications were made to the home that they even got to the \$25,000. I am not sure under your standards what this \$500,000 is really for in light of OHIP.

Mr Ferraro: I would like our legal expert to clarify a point that I think Mr Godard made.

Ms Parrish: I think it is important just to note that the actual threshold test—I recognize people do not like the test, but what the test says is that in respect of loss or damage arising from the use or operation of an automobile, the owner or occupant is not liable in an action in Ontario for loss or damage.

I think what would happen when an action is an action in another jurisdiction—where an Ontario driver is driving, for example, in Michigan—is not quite as put forward. What would happen as the result of standard policy form is that the insurer would be obliged by law to defend on the basis of the jurisdiction. Conflicts of laws indeed, as you have said, are very complex and the situs of the accident is one the courts would have to decide. Were the accident occurring in Michigan between an Ontario driver and a Michigan driver, quite likely the courts would decide that the situs of the accident was Michigan, and if the situs of the accident were Michigan, then the action would be under Michigan law and it would have to be enforceable in the courts the way Michigan judgement is enforceable.

Mr Welch: That is exactly what I am saying. That is even an additional reason why there is going to be a conflict, because not only is Bill 68 at odds with pre-existing laws regarding conflict; it is at odds with all standard insurance policies. You have not read the last part of the sentence which includes the United States of America or any other jurisdiction. Then under subsection 231(11), it says, "A judgement of a court of another jurisdiction is not enforceable in Ontario if the person liable under the judgement would not have been liable under subsection (1) had the action been brought in Ontario," and that means your new harsh threshold.

Ms Parrish: The only thing I would say, in dispute on this, is that these issues as to whether or not it was contrary to conflict of laws were canvassed when there was a distribution of the classification draft and certain changes in the draft were made to accommodate these concerns.

That is not to say they should not be further considered. I think it is just that other people, in reviewing this legislation, did consider these points.

I will not take the committee's time in terms of lengthy disputes between lawyers because I realize that every lawyer will have a somewhat different opinion on it. I just want to clarify that the issues of conflict of laws and how the policy has been drafted were considered.

Mr D. S. Cooke: I do not think it is entirely fair for a member of the ministry to come down here, in a border city where this type of conflict is going to take place on a regular basis, and then simply leave it at that. Instead of two lawyers speaking to one another, I would like her to perhaps speak in English and explain to me exactly what will happen if a person from Windsor, insured under this bill, gets in an accident in Michigan and has the type of conflict that has been examined, or explain to us what will happen if a Michigan court rules that the judgement is going to be under the Michigan law. Who is going to cover the differences between the insurance that is provided under Ontario law for that Windsor driver?

The Chair: I am going to ask you to respond to that later and probably in writing, so that would help.

Mr D. S. Cooke: No. You see, the thing is, the press is here—

The Chair: I appreciate that.

Mr D. S. Cooke: —and this is incredibly important to border cities. I think the explanation should be given here. Since the ministry's staff person went out of her way to defend the government legislation here, I would like to be able to hear an explanation provided to the people in this community now.

Mr Kormos: She said the consultation took place.

The Chair: I will ask if she is prepared to do that, or is the parliamentary assistant prepared or is someone prepared to answer that question?

Mr Kormos: Rick, you do that one.

Mr Ferraro: Not being a lawyer may be an advantage in this case.

Ms Parrish: I regret that you feel I was here intervening inappropriately. That was not my intention. If that is your view, members of the committee, I do apologize. I was simply trying to clarify to the best of my knowledge what I thought would happen. Obviously I am not going to attempt to substitute my understanding for that

of the witness because that is his testimony. However, the issue of how these conflicts interact is indeed very complex. My understanding of this is that in the case where the situs of the case was clearly Michigan, or for example, Missouri, the action would be enforceable and there would be a requirement under standard form policy in Ontario to defend under the law of those jurisdictions.

Mr D. S. Cooke: That is what I am asking. Who would pay for whatever decision was made by the courts in Michigan?

Ms Parrish: The Ontario insurer, were the Ontario driver at fault in an accident that has a situs in another jurisdiction. These cases occur quite often where there is a difference of standards. For example, the Michigan threshold is higher or more stringent, many people view, than the New York threshold, so this problem already arises within the United States.

That is my understanding. I am not trying to defend anything; I am just trying to say what my understanding is. That does not mean this gentleman and other people have not made good points that we will go back and look at from a legal perspective. It is my understanding, from the review of the work that has been done, that this issue has been dealt with adequately to avoid the conflict this gentleman has pointed to. But if the language of the statute is inadequate in that regard, I certainly think that we would look at it again, as we would look at many points that people have raised.

1120

Mr D. S. Cooke: So if there is going to be a car accident between an Ontario driver and a Michigan driver, the Michigan driver had better make sure that the accident takes place in Michigan; otherwise he is going to be subject to Ontario rules.

Ms Parrish: If the accident occurs in Ontario, yes, the Michigan driver would be subject to the law of Ontario and would have the benefits paid out under the no-fault schedule eligible to him or her.

Mr Runciman: I just want to get a clarification from the witness in respect of this issue as well. What you are saying or suggesting to us is that if someone from Windsor happens to be in Detroit and gets into a fender-bender or something much more serious and the courts deal with it under Michigan legislation, as you read the bill before us, the Ontario driver could be left out in the cold.

Mr Welch: Exactly. I read this as meaning that section 11 can only mean that we are not going to honour the Michigan judgement. Otherwise, there would be no legislative purpose for it to be there. You see, when our no-fault act went into effect in 1973, the state of Michigan sat down with the Ontario insurance industry and they entered into what I referred to in my written submission as a quid pro quo agreement. They said, "Look, if you'll sign these certificates and send them to Michigan, we'll let the Canadian drivers drive over here with the same immunities that Michigan drivers have, with the understanding that if they get hurt in Michigan, they'll get benefits in accordance with the Michigan scale." I see that whole agreement as being thrown out if this legislation goes through.

Mr Ferraro: Mr Welch, could you tell me what section you are referring to as section 11?

Mr Welch: On page 19, subsection 11, under section 231.

The Chair: It is 231a.

Ms Parrish: Sir, are you looking at this bill?

Mr Ferraro: What are you looking at?

Ms Parrish: I think the point that you are making did occur. There was a problem in the earlier draft that was released in September, but there is now this new change and there are some modifications and indeed they may not be appropriate or they may not meet the problem you are referring to, I am not sure. I am not trying to take up more time than would be appropriate for a staff member. I am just having some difficulty—

Mr Ferraro: It certainly is not in the new bill, or we cannot find it.

Mr Welch: I have something that was faxed to me just last week, which is on the page following the definition of your harsh threshold, and it says, "A judgement of a court of another jurisdiction is not enforceable in Ontario if the persons liable under the judgement would not have been liable under subsection (1) had the action been brought in Ontario." If I do not have the latest draft, I apologize, but that is what I have before me.

The Chair: Maybe while we try to clear that up, I have Mr Sola and Mrs LeBourdais for three minutes.

Mr Sola: I have one question. I was interested to find out that the Michigan rates had increased substantially since implementation of no-fault. A couple of weeks ago we had a couple of representatives of the New York system and one

pointed out that since the inception of that system, the average increase in New York had been under five per cent. That was just a verbal comment on his part. Then another one came up and he had in his written brief a table for the past six years in which he showed the rates of increase going up anywhere from 1.8 to 4.9 during those six years. I am wondering to what you would attribute the difference in the rate of increase in New York state and in Michigan state with the implementation of similar types of no-fault.

Mr Welch: I cannot speak that much for New York. I am familiar with their current system, but I am not that familiar with the system they had before. Ours went up because we offered our people a much better benefits package. Someone has to pay for it. That is where it came from. Our medical is unlimited, there is no cap on it. It can go for the life of the claimant provided that it is reasonable and necessary. Someone has to pay for these extraordinary, catastrophic claims and so on, and it has been spread around to the entire people of Michigan, who have paid for it.

Mrs LeBourdais: I just had a very brief point of clarification. We are indeed proud of our OHIP medical system in Ontario and in Canada, but there are many things that still are not covered. I think you alluded to the \$500,000; you were not sure. There would still be other perhaps rehabilitative services—psychologists' services, perhaps some home care services—that would not be covered, particularly for those people who have to retrofit a home to accommodate wheelchairs, etc. That is the kind of thing that would cover.

Mr Runciman: You may not have any information in respect to this, but some of the testimony we have heard before us in respect to the states that have gone with the no-fault systems is that there have been concerns about increased accident frequency. In fact, when we looked at the Quebec experience, despite some initiatives undertaken by the government to try to improve highway safety, there was indeed an increase in accident frequency and an increase in highway accident deaths. I am wondering if you have any information in respect of the Michigan experience relating to that. Nothing at all?

Mr Welch: I do not have any specific information. It is my gut impression that people tend to drive a little more carefully, but that is not because of the no-fault system. I guess it is a part of our no-fault system. But you see, we too get our collision damages from our own carrier, regardless of who is at fault. I think people tend to drive a little more defensively, but I do not

have any statistics to give you; a little more carefully.

Mr Runciman: That would be contrary to what we have heard. In fact, you are giving the opportunity for more dangerous drivers to be on the highways under a no-fault system.

Mr Welch: I know that once people are involved in an accident, we give them a financial disincentive to return to work. There is no question about that, but I do not come before you suggesting that they got into the accident for that reason.

Mr Runciman: Do you have any knowledge in respect of the profit and loss experience of the insurance industry in Michigan under no-fault versus the previous system?

Mr Welch: I know that some statistics have been published in the past year, and basically what they have said is that the average cost to a claimant has gone up about 21 per cent since we have had no-fault go into effect. How that relates directly to their profits and losses, I do not know, but it certainly got more expensive on a per-accident, per-claim basis.

Mr Runciman: Are there any constitutional challenges to your threshold? There have been some suggestions in respect to our threshold, the one proposed here, that it would violate the Charter of Rights.

Mr Welch: Indeed there were. Our entire no-fault statute was called unconstitutional for a time. Indeed, that is why now our judges are no longer allowed to decide the threshold issue on motion. You see, in the mid-1980s we had a system where our judges, somewhat like your proposed system, could decide the threshold. The problem was that our judges could not take evidence or make any findings of fact on motion. Indeed, in about 1986 our courts found that that was a so-called violation of our equal protection. They struck it down on a constitutional basis and that is when the law came down and said it had to be decided by jury. That is where we get our problems. That is what bogs us down and why the system does not work.

The Chair: I have Mr Ferraro, hopefully, on a point of clarification on this. It is an important matter because I am from the Niagara Peninsula, a border community as well.

Mr Ferraro: It certainly is an important matter. It is our understanding, having looked at your paper, sir—and as you pointed out with your associate, you were right according to the draft you were using. However, that draft has been changed and the new bill, as far as we are

concerned, deals with the issue from the standpoint that if indeed there is an action in Michigan, for example, the situs—that is, where the action occurred—and the courts establish their ruling and that indeed the insurance companies will pay according to that ruling. We think we have dealt with this, but we would also say, quite frankly, that if you want to take a good look at this in subsequent days, Mr Godard, you and your associates, we would be more than happy to receive your comments if, in fact, you think there is some lack of clarity.

Mr Kormos: Does that mean that tourists who come to Ontario are similarly subjected to our no-compensation system, the innocent tourists who unknowingly become victims of this new insurance scheme, because they are not going to be compensated unless they are dead or damn close to it?

Mr Ferraro: They would be subject to our rules, Mr Kormos. They would go to our courts.

1130

The Chair: Gentlemen, thank you very much. We let it go a little over because it is an important point. If you are willing to take up the request to take a look at it, I think it is section 231a, page 30, in the most current bill that we are looking at. If you would care to contact the committee clerk through Mr Godard, we would be happy to circulate your comments and recommendations to the committee. Again, thank you for a very useful presentation.

Mr Godard: Just before we depart, I am not sure that Mr Welch has filed a copy of his written submission.

The Chair: Yes, we do have a copy. Is it this one?

Mr Godard: Yes.

The Chair: Each of the committee members has a copy. I think it was based on the draft you were working from in terms of that large particular issue, so if you could take a look at it and get back to us, we would appreciate it. Thank you very much.

The Chair: From the Essex county fibrositis support group, Rosemary McGregor.

Mrs McGregor: You probably do not know what it is.

The Chair: I do not know what it is. That is it exactly. You are going to tell us.

Mrs McGregor: Does anyone here know what fibrositis is, just out of curiosity?

The Chair: Something, obviously, to do with fibre. I mean, I can figure that much out.

Mrs McGregor: So nobody knows what it is?

The Chair: No.

Mrs McGregor: It has been around for a long, long time.

The Chair: Okay. Why do you not introduce yourself? The next half hour is yours and if you could also leave us some time for questions and answers, we would appreciate that as well. I think the clerk has distributed a copy of a booklet.

Mrs McGregor: It is a small brochure letting you know different things about the disease.

The Chair: Please proceed.

ESSEX COUNTY FIBROSITIS SOCIETY

Mrs McGregor: I am Rosemary McGregor and I am here to represent the Essex County Fibrositis Society, and this is Joan Brown, the president of the society.

First, I would like to tell you a little bit about the disease. Our disease is a rheumatic disease that affects soft tissue, which is muscles, ligaments and tendons. There are many symptoms of our disease. The first symptom is chronic pain. We have multiple tender points in characteristic areas, chronic fatigue, unrefreshed sleep, depression and insomnia. Causes of the disease are really touchy. Basically, there has been a lot of research done within the last three years. They have come up with four causes that are turning up all the time as a cause of our disease, which are viral infection, automobile accidents or other injuries, another condition, such as rheumatoid arthritis, or severe emotional trauma.

There is one program in Ontario, and that is in the University Hospital in London. Dr McCain allows three patients every three weeks to be admitted. What that consists of, basically, is that they are teaching us how to cope with our pain. Our pain does not stop. There is no magic pill for it; there is no cure. What it does do is introduce us to a physiotherapist, an occupational therapist, a psychologist and a rheumatologist. We learn how to cope with the pain by dealing with it and we have to do certain exercise programs and things like that just to handle the pain that we are in.

I think one of our biggest problems is that we all look fine, and I would consider that a nonvisible disability. By the way, I have fibrositis and it is quite severe, so I do not think I look like I am disabled. The former Minister without Portfolio responsible for disabled persons, the member for Essex South (Mr Mancini),

in his report of last year, an expensive book on all that he has done for the disabled people, said in the last statement: "I am extremely aware there is more to do. For instance, we have not yet touched on nonvisible disabilities such as epilepsy or psychiatric conditions." My point here is, right now Remo Mancini, has not done that much for us, for the disabled people. We are not getting anything special.

We have also contacted Elinor Caplan. I have a letter from Elinor Caplan that I have had for some time and not bothered to mention to anyone. Herb Gray was kind enough to talk on my behalf and let her know how badly we need awareness for our disease. People are not recognizing it. Obviously, none of you knew what it was, so this is just an example.

Anyway, we wrote back and forth and she has written me a letter telling me that what is going on with fibrositis is terrible and that they have written to the doctors with different medical ideas for prescriptions and things like this. She goes on to speak about persons with cystic fibrosis in this province of Ontario. She continues to write on cystic fibrosis, even though we have written her about fibrositis. That is the concern our government is showing us.

And just being a person, I think I will have to say that I am not here on my own behalf, because my accident happened before no-fault is going to be coming in effect, so I am going to be taken care of. But the other people whom I have talked to daily—the phone calls I get, the nightmares people are going through because of their suffering are just tremendous. I cannot imagine how somebody can allow these people to continue to suffer. Nobody wants to take responsibility for us. Who is going to stand up for us and say, "Yes, we're here, we exist, we need help"?

I need someone to take care of me. I need someone to take care of my family. Everything has been affected. Everything in my life has changed. I was 36 years old when it happened and somebody told me that because I was in an accident, that is it. You do not go to work any more. You do not go to your son's hockey games any more. I have had enough from this government and so have 250 other people in Windsor who represent our organization. How can you continue to let the pain and suffering go on? I cannot imagine how anyone could do that. How can we say how much pain puts in someone's life every day? How does that change somebody?

My son came up to me when he was 11 years old and he asked me: "How come you don't laugh

any more? How come you have to stay home? I hate this accident." Can I change that? I was an innocent victim, and what no-fault wants to do is take something—pride—away from me. This money can allow me to have some kind of pride. I can have dignity. I can have somebody come and clean my house and do things I cannot do, and I can hold my head high. Other people cannot do that. It does not seem to be fair for you to say that we do not suffer. "You do not look like you are suffering." How do you know? I want to know how every one of you knows what we go through every day. How would you like to depend on medication to exist, depend on a sleeping pill so that you are able to go to sleep?

I do not know. What do I say to my husband? I do not take the sleeping pill tonight for a half-hour, because what are we going to do tonight? Is my back sore? I cannot even do that. You are stripping everything away from me, and I cannot just sit here any more and take it from the government. We have been to the city and it seems like everybody does not want to recognize us. So I just think it is time that the government took a look at what chronic pain is. They have to do something.

I am not even looking at my notes. I am on a roll here. I suppose it is a strong statement, but it is something that I cannot help and I feel that is really happening to us.

By introducing no-fault insurance into Ontario, you would be taking our only hope away for a better quality of life. As residents of Ontario, we are entitled to health care. You would be taking our only means of that away from us. Chiropractic medicine, massage therapy and psychological help are not covered under the medical plan. Who will pay to stop this needless suffering?

Our government cannot allow this to happen to people who suffer from fibrositis. Being trapped inside bodies filled with pain is our life. So please, help us find the way to stop the needless suffering by giving us the right to receive benefits for our chronic disease. Animals are put out of their misery. Are we just to be forgotten? I would not let my dog suffer the way we are.

1140

Mr Kormos: Thank you for your presentation. I admit my ignorance on this disease. Could you just explain to me what your understanding is of the causes of the disease?

Mrs McGregor: Out of all the research that has been coming in from the United States and Canada, mostly from the United States, the four main causes of the disease would be a viral infection, automobile accident or other injury,

another condition such as rheumatoid arthritis, another rheumatic disease, where then fibrositis would be the secondary disease, or severe emotional trauma. I would consider a car accident could cause severe emotional trauma to the point where you are having nightmares and things like that.

Ms Oddie Munro: We certainly appreciate your coming before the committee. I am just wondering, on the no-fault side of the bill there are a considerable number of services and benefits that are available quickly under the overall title of rehab benefits and long-term benefits. They include the incidence of psychological manifestation and trauma. To what extent would the fast delivery of services assist in the treatment of fibrositis?

Mrs McGregor: Like, what does psychological help do for me?

Ms Oddie Munro: No, the whole package of rehab benefits, because there is available a team of various therapies, occupational therapy, you mentioned some of them, psychiatrists, psychologists.

Mrs McGregor: Okay. First, occupational therapy: What you have to do every day is to take rest periods at regular intervals, at least 15 minutes at a time, because if you do not, you are just not going to move any more for the rest of that day and you become weaker and weaker. So what they teach you is to stop and rest before you get too sore and too tired. They may teach you certain things and different ways to do them: you should not be stretching and reaching for things, you should use a stool, and other things like that. That is occupational.

As far as psychological health goes, in my opinion it is not normal for someone to be in pain all the time. That is not normal living. So because you are in pain all the time, you do get depressed, and small things that everyday people take for granted become very big challenges for us, such as walking up the stairs. If you ever felt trapped somewhere and there is nobody beside you to help you get down, you have to stay there. I get embarrassed when I have to ask for help if I cannot get down by myself. They help us deal with that in our lives. I mean, there is no special anything. The program is only three years old in London and there is no other in Ontario, no other in Canada.

Ms Oddie Munro: I think your testimony is very helpful, because it is my understanding that a team approach will be taken in terms of the kind of rehab services that are available and the kinds

of things that you are asking for. Is it your understanding that the rehab is a team approach with a variety of professions who know how to treat? Now would this group of clients be considered for treatment under the proposed bill?

Mr Ferraro: It is my understanding that indeed if there is the ailment, and obviously there is, and rehabilitation is required, they would certainly qualify.

Mrs McGregor: I cannot imagine how that can happen when we have government statements that we are not really here and we have been fighting for three years against everything. How can I imagine this insurance company is going to believe that I have this disease when Remo Mancini and Elinor Caplan do not?

Mr Ferraro: The doctors would make the determination. If the doctors are saying you have the disease—and no doubt you do have, you and many others unfortunately—then the insurance company essentially has no—

Mrs McGregor: I can have as many doctors on this side say I have it and twice as many on this side to say I do not and I can prove that.

Mr Ferraro: I am just—

Mr Runciman: The insurance company, according to testimony, may well hire a gynaecologist to tell the government that you do not have it.

Mrs McGregor: Exactly.

Mr Runciman: No one disagrees with the testimony that we have had before us in respect to this in the past, not necessarily this disease, but other concerns. No one disagrees with the concept of speedier no-fault benefits. As has been pointed out on numerous occasions, we have had no-fault in this province for a significant number of years. What we are disagreeing with is the removal of benefits and the opportunities available to people like yourselves to go through the court system if necessary to get the kind of assistance you require.

You may have mentioned this in your testimony earlier, but you said that you were involved in an accident. Do you feel that the disease you suffer from is the result of an accident?

Mrs McGregor: Yes.

Mr Runciman: Was that an auto accident?

Mrs McGregor: Yes.

Mr Runciman: And you did have access to the legal system? You pursued it?

Mrs McGregor: Yes.

Mr Runciman: And had what you believe to be a reasonably satisfactory resolution?

Mrs McGregor: I do not know yet.

Mr Runciman: Oh, you are still in the accident process?

Mrs McGregor: Yes.

Mr Runciman: I see. How long has that been under way?

Mrs McGregor: Approximately four years.

Mr Runciman: Obviously you are not deterred from the process. There is a concern about the length of the tort exercise, but we and others, including Justice Osborne, have suggested changes that could streamline the process rather than, as suggested, throwing the baby out with the bath water, which this legislation is doing. Obviously you are here today because you believe in the process and the fact that you at least have that opportunity available to you.

Mrs McGregor: That is right.

Mr Runciman: And others, if indeed this legislation goes through, will lose that opportunity.

Mrs McGregor: The program in London will always be there and hopefully it will get bigger, but I had access to that program, car accident or no car accident, and the medication as well. So I do not think that part is being affected, but I really do not believe that people will have the opportunity to get back whatever for human pain and suffering. How can you even put a price on that? Lord, it is so hard to make someone understand what you go through on a daily basis.

Mr Kormos: That is exactly what is wrong with this legislation. What it says to innocent victims like yourself and the people in your organization is that you will not be compensated for the pain and suffering you undergo, about which you have no choice.

Mrs McGregor: That is correct.

Mr Kormos: Notwithstanding that it is impossible to ever fully compensate you for that, you would give anything just to have the pain taken away, but if money is a way in which there can be some gesture of compensation, surely that is what is fair. You hear these folks talk about their no-fault package, but it is exactly as you point out, you are going to be fighting your own insurance company because it is going to be saying it is all in your head.

Mrs McGregor: That has been said to me a number of times.

Mr Kormos: Like so many people have told you so far and like Mr Runciman says, they will find the doctors who will say that too.

Mrs McGregor: They have doctors who say that. They have them. Take it from me, I have been there already.

Mr Kormos: So we are not dealing here with insurance companies that have acquired a new generosity of spirit, a new sense of charity towards humankind. We are talking about insurance companies that are going to be real good at collecting premiums, because we have learned premiums are going to go up not by eight per cent but by as much as 50 per cent.

Mrs McGregor: I agree with that.

Mr Kormos: That is what the minister said a week and a half ago: Premiums will go up by as much as 50 per cent and benefits are going to be reduced. You and people like you, innocent victims of drunk drivers, reckless drivers, careless drivers, will not get a penny, not a nickel, not a dime, in compensation. Surely to God, as you have already said, how can that be fair?

Mrs McGregor: It cannot be, in my opinion. To be an innocent victim of anything, not even a car accident—if your son or daughter was walking down the street and was assaulted, anything like that, you would not let that pass. If he or she was an innocent victim, you would not let that pass. The feeling you would have inside from that, you are so filled with anger and depression, because I had no control over what was happening or you would have no control. We lose control of our own self. I have no control and you want to take more away from me.

1150

The Chair: Thank you very much. Just a question on the brochure here. Of the 250 members who are part of your association, on page 2 it says, "More often than not, fibrositis is self-limited, which means that sooner or later the symptoms can go away by themselves." I take it that nobody has found himself or herself in that category.

Mrs McGregor: If you would like, I can give you the latest—

The Chair: No, I am just questioning the brochure you sent around for our information and to educate us.

Mrs McGregor: That is correct.

The Chair: If the statement is inaccurate—

Mrs McGregor: It is inaccurate.

The Chair:—you may want to get back to the people who put out the brochure and tell them to put out an accurate one.

Mrs McGregor: There has been a recent one that has been done.

The Chair: This is not the most recent one?

Mrs McGregor: That is the most recent brochure. There has been more information—

Mrs Brown: That is from the United States.

Mrs McGregor: —but what they are saying is, if there has been any remission, it has been short-lived and over a 12-month period. The shortest that they have ever seen anyone have it is 13 years.

The Chair: The only point I am making to you is that if you are providing us with information and education and this is not accurate, maybe we should not distributing the brochure.

Mrs McGregor: Probably.

The Chair: It misleads in terms of more or not, “which means that sooner or later the symptoms can go away by themselves.”

Mrs McGregor: More than not then, just to clarify it.

The Chair: Again, I am just saying, from your perspective, for the education, you may want to consider before you distribute this.

Mrs McGregor: That is quite informative compared to what you would get in Windsor from many doctors.

The Chair: Thank you very much for your presentation.

From the Automobile Club of Michigan we have Mr Wild. We have a copy of your presentation circulated to the committee members. You have approximately half an hour. If you could leave some time for some questions, comments and discussion, we would appreciate it. Please identify yourself for the benefit of Hansard, and the gentleman with you, and then proceed.

AUTOMOBILE CLUB OF MICHIGAN

Mr Wild: My name is Michael Wild. I am assistant vice-president of corporate relations for the Automobile Club of Michigan, and with me is Robert Vogt, assistant in our claims department.

Before I proceed with my testimony, I would like to just describe briefly the company that I represent. The Automobile Club of Michigan is an affiliate of the American Automobile Association. We have been in business since 1916 and have currently 1.4 million members in the state of Michigan. Although we are the largest writer of automobile insurance in the state of Michigan,

we are equally known for representing the interests of and serving all motorists in our state through a wide variety of public safety and service programs.

In my testimony today, I would like to address the issue of no-fault auto insurance from three perspectives: First, the characteristics of Michigan's no-fault law which have earned its reputation as the finest auto insurance reparations system in our country; second, those elements of our law and subsequent interpretations of it which have failed to live up to its promise, and third, a comparison of the Michigan system with that currently under consideration here in Ontario.

First, while it is true that there are many opinions about no-fault laws in general, my company agrees with those expressed by the Wall Street Journal, Consumers Reports and Kiplinger's Changing Times magazine, which describe Michigan's no-fault law as the best in our country. Changing Times I think says it best in its July 1989 issue: “Michigan shows that no-fault can be fair to everyone, while holding rates within reasonable bounds.” I have taken the liberty of including a copy of that article with the material I have presented today.

Some of the reasons for that high praise include the following:

Under no-fault, 73 per cent of the premium dollars collected go directly back to policyholders in the form of benefits. That compares to only 48 per cent for more traditional tort-based coverages. The reason for that disparity is simple. Legal costs in the tort-based system funnel as much as 32 per cent of premium dollars away from consumers and into court costs and attorney fees. From a consumer perspective, it is obvious that no-fault has a distinct advantage.

Although Michigan's no-fault law was not implemented primarily to lower auto insurance rates in Michigan, there is strong evidence to suggest that it has been instrumental in keeping auto insurance rates under control in our state. For example:

The latest available figures place Michigan 17th out of the 50 states in auto insurance rate levels in spite of the fact that our system provides the broadest coverage of any system in the country.

Between 1986 and 1988 auto insurance in Michigan went up by five per cent. Of the 50 states, 41 had rate increases greater than that over that same period.

Finally, a federal Department of Transportation report issued in 1985 indicated that auto

insurance rates in Michigan would have been 17 per cent higher had it not been for the no-fault law.

Is Michigan's no-fault law perfect? Certainly not. In fact many people in our state are calling for changes right now in the law that would address some of its weaker points.

The most critical element of any no-fault law is the strength of its threshold, the standard that determines when lawsuits are permitted. A strong threshold not only maximizes benefits received by policyholders, but it helps keep premiums under control at the same time. As the *Wall Street Journal* said in its 5 January 1989 issue: "The most effective way to reduce auto insurance inflation would be to adopt true no-fault insurance, ie, no-fault with a strict verbal threshold to eliminate lawsuits for all but the most serious injuries."

Recently in Michigan the strength of our verbal threshold has been eroded by court interpretation. The phrase, "serious impairment of a body function" has been the critical issue.

In 1982 the Michigan Supreme Court, in its *Cassidy versus McGovern* decision, established a strong working definition of our verbal threshold. The standards developed for determining serious impairment included the following factors: impairment had to be similar in severity to death or disfigurement; impairment must be to an important body function; impairment must have a significant impact on a person's general ability to lead a normal life; impairment must be objectively manifested; the threshold penetration was to be determined by a judge.

In the years immediately following that decision, bodily injury claims had stabilized and pressure on auto insurance rates had been relieved. For example, paid bodily injury losses per insured car actually dropped from \$37.35 in 1984 to \$34.10 in 1986; this at the same time as outside pressures were causing rates to go up.

However, in late 1985 a second Supreme Court decision in Michigan called the *DiFranco* decision caused another shift in claim activity. The court in that decision threw out the guidelines I just referred to and ruled that disputes over the threshold question could be resolved by a jury.

In particular, the following aspects of the threshold changed: the injury in question no longer needed to be to an important body function; the test of the ability to live a normal life had been rejected; it was no longer necessary for the injury to be objectively manifested;

disputes over threshold were now to be resolved by a jury.

As a result of those interpretations, which were implemented in early 1986, our experience with bodily injury claims has steadily worsened. After a 10 per cent drop in bodily injury claims per vehicle from 1984 to 1986, these costs jumped 27 per cent in the two years following the *DiFranco* decision.

The other major factor affecting auto insurance in Michigan is the rising cost of medical care. Since 1981, in Michigan, doctor's fees have gone up 65 per cent and hospital room charges 84 per cent, while the consumer price index has gone up 30 per cent. These numbers are reflected in the increasing payouts made under personal injury protection insurance, which consists primarily of unlimited medical coverage. Since 1981, personal injury protection paid claims per vehicle have nearly doubled, from \$45.79 to \$85. As you can see, in Michigan we have some work to do to maintain our status as number one in auto insurance in the United States.

I believe the good news for residents of Ontario is that the bill you are currently considering not only contains many of the basic features that have made Michigan's law so successful; it also deals effectively with some of the aspects of our law which I have described as needing attention.

Specifically, the strength of this proposed legislation lies in: its strong verbal threshold with inclusion of the key components of permanence, important bodily function and physical nature of the injury; the decision to allow courts to determine if the threshold has been met; the automatic co-ordination of auto insurance benefits with other available coverages.

In summary, I believe the Michigan experience proves that no-fault is the best system for meeting the auto insurance needs of all motorists. It is also apparent, based on our experience, that the no-fault plan currently before this group is among the best we have seen. For the benefit of Ontario motorists, I would urge your support.

That concludes my formal testimony. I will be happy to answer any questions.

1200

The Chair: Thank you. I have Mr Runciman, Mr Kormos, Mrs LaBourdais and Ms Oddie Munro. Mr Runciman, up to five minutes.

Mr Runciman: I was quite concerned about your testimony when I was reading it. I am obviously a member of the Progressive Conservative Party and very much opposed to this

legislation, and I disagree almost completely with everything you are saying here. I was quite concerned until I heard you say that you were one of the major writers, if not the major writer, of auto insurance in the state of Michigan. That soothed my concern somewhat, because virtually every witness appearing before us who is supportive of this legislation is in some way, shape or form connected to the auto insurance industry. I think it is interesting that you are here supposedly representing the interests of and speaking on behalf of the best interests of consumers in the state of Michigan.

We had another American appear before us who I think would have a much more solid reputation with respect to concerns of consumers in the United States. That is a gentleman by the name of Ralph Nader, who certainly takes strong exception to what you are suggesting here in your testimony today. In his studies of no-fault systems throughout the United States, including the Michigan system, he believes quite strongly—he has come to Toronto without expenses or any other kind of compensation to appear before our committee, appearing at Queen's Park on two occasions to express his views and his concerns, because he indicates that Ontario will be a significant leader in this field.

If we are coming in with this kind of threshold, the strongest in North America, it is going to have an impact on jurisdictions in the United States. I would suggest that is why you are here supporting this threshold and this legislation, because it is going to have the kind of impact that you, as a seller of insurance, and other insurance executives in the United States are going to feel very good about indeed. You can point to Ontario as a leader in this field and say, "They have come in with the strongest threshold in North America." You are going to hope that has some sort of wave impact on jurisdictions in the United States, and obviously have some very positive impact on the bottom line of the insurance industry and insurance companies in the United States.

Mr Kormos: I have a little bit of a problem too, because while this committee has been sitting for a few weeks now, it seems almost as if the government has had difficulty finding people to come before the committee to support this legislation. Mr Taylor, who was here this morning with the brokers, has appeared before this committee three times, each time under different guises, each time of course praising the legislation.

You may not have been told this, but consumers' groups, unions, lawyers and doctors, groups fighting for the rights of the handicapped, groups concerned with psychological injuries, have all been appearing before the committee saying this is bad legislation. They have all come before this committee saying that the Premier (Mr Peterson), although he may have promised—not all of them were prepared to say that the Premier lied. I will. The Premier lied back in 1987 when he promised to reduce auto insurance premiums.

This is not going to do it. It was like pulling teeth, but finally the minister acknowledged that the premium increases in the first year alone of this new scheme are not going to be just eight per cent, but from eight per cent to 50 per cent. He said that a week and a half ago. So much for controlling premiums.

The only people, with a few exceptions, who have come before this committee praising this insurance scheme are people in the auto insurance industry and brokers. Now, what is the problem? Are all those people, the consumers' groups, the unions, the lawyers and doctors, the groups who fight for the rights of the handicapped, the groups concerned with psychological injuries, wrong and the auto insurance industry and their spokesmen are right? How come? How come everybody other than the insurance industry condemns this legislation as being unfair to victims, as putting incredible profits in the pockets of the auto insurance industry?

You may not have been told this either, but the auto insurance industry made big investments in this government. They invested over \$100,000 in cash in the last general election and members of this very committee, from the government, were beneficiaries of gifts during the last election campaign—people such as Brad Nixon, Lily Oddie Munro, Carman McClelland—donations from auto insurance companies. So I have no great surprise that they would come here and participate in this committee, advancing the interests of the auto insurance industry.

In Canada, as a member of the New Democratic Party, I get money from trade unions, but I tell you this: I am not ashamed to be advancing the interests of working people, but I will be damned if I will put money in the pockets of the auto insurance industry by taking that money away from injured victims and from drivers across Ontario.

I tell you that the fact you came across the river today could well be lauded, but the people in this

province, regardless of what you say and the other hacks in the insurance industry say, will not tolerate this type of gouging, this type of pickpocketing, this type of burglary that is taking place, this type of payback in view of the greasing that has been done by the auto insurance industry and this particular government. The relationship between that industry and this government is quite frankly obscene, because this government is deserting the interests of the people of this province in favour of paying back the long-term debt to that very same auto insurance industry. They should address those issues.

The Chair: Before I move on to Mrs LeBourdais and Ms Oddie Munro, do you want to respond to either of these statements from the two gentlemen?

Mr Wild: Of course, you know I am not familiar with the political situation in this country. I guess I am glad I am not, but we have our own problems in that respect. I think there are many people, not only in Michigan but in other states in our country, who are very supportive of the no-fault insurance concept and they are not all insurance company representatives. I think some of the most vocal supporters of no-fault are those people who have benefited most from the law, the victims themselves, the people who in Michigan at least are taking advantage of our medical system, our unlimited medical coverage, people who are being rehabilitated from injuries.

One of the most important factors, which probably does not get a lot of attention in no-fault deliberations, is the fact that it is so important in serious injury cases to get action quickly. Somebody referred a few minutes ago in previous testimony to the length of time it can take to pursue legal avenues of recourse. It is extremely important to get action taken quickly when there are serious injuries, to develop programs of rehabilitation so that people can quickly get back on the road and get back to as near a normal life as possible. We see that as one of the most important benefits of no-fault, to get those benefits in victims' hands as quickly as possible when it can do the most good, not three and four years later when it is too late.

Mrs LeBourdais: I guess if I could have my druthers at the moment, since we have had yourself and another individual from Michigan, Mr Welch—I do not know if you were in the room and present when he gave his testimony. I find it interesting that they are both so diametrically opposed. If I may just read one brief paragraph

from his submission. He says, "The notion that Bill 68 will tend to reduce rising automobile insurance premiums in Ontario is an absolute myth."

Then if I quote from your presentation, you said the latest available figures place Michigan 17th in auto insurance rates in the United States in spite of the broader base of coverage that you are able to provide. You said that between 1986 and 1988 insurance in Michigan went up by five per cent. If my memory serves me correctly, I believe Mr Welch said that since 1973 his personal insurance rate—I believe he was referring to that—had gone up some 100 per cent.

Since we as committee members are trying to listen and hopefully at the end make some deliberations, could you help to clarify the situation for us?

Mr Wild: I am not sure. I know that the basis—

Mrs LeBourdais: You used the same facts, to some degree, as the basis for your judgements. How come the difference?

Mr Wild: The only thing I can relate to is that I think the most telling evidence in that respect is the study to which I made reference done by our federal government, the Department of Transportation, which in 1985 looked at Michigan's no-fault law specifically. Their conclusions were that were it not for the no-fault law, if Michigan had continued with its system as it stood prior to 1973, rates in Michigan would be 17 per cent higher than they were with the no-fault law. That, I think, is the telling evidence that suggests no-fault really works.

I think the benefits in terms of rate containment is really a bonus. The benefits of no-fault are that it puts, as I said before, more benefits in the hands of consumers. It gets them there more quickly when they can do the most good. The fact that it can do it over the long pull somewhat more efficiently than other systems, I think is a bonus. I think that study gives credence to that notion.

Mrs LeBourdais: So then in your mind the previous contention that this will not serve to keep premium increases down would be false.

Mr Wild: I cannot comment specifically on this particular law. I can only say generally that with a no-fault system of the type that Michigan has and of the type that you are considering here, the experience we have had suggests that would keep rates lower than the tort-based system we had, at least prior to 1973.

Ms Oddie Munro: Your threshold definition: can you give me the benefit of your experience in terms of whether or not it discriminates against

psychological damage or trauma? Is psychology specifically mentioned in your threshold, and even if it is not, do you believe that it treats psychological manifestation and trauma, chronic pain, fairly?

Mr Wild: Our threshold language does not refer specifically to that. It refers to a serious impairment of a bodily function. Maybe I would ask my associate, Mr Vogt, to comment on that part of it.

Mr Vogt: There was never any particular intent to include or exclude psychological conditions in the threshold, and I am sure if you were to review the body of litigated cases you would find numerous examples where payments have been made on injuries that had psychological manifestation involvements.

Mr Wild: Michigan's definition of "medical coverage" is a very broad one and indicates that benefits are payable for all reasonably necessary medical procedures. So it is a very broad definition and includes undoubtedly, as Mr Vogt suggested, in many cases psychological treatment as well.

The Chair: Thank you very much for your presentation.

I have three pieces of business before we adjourn for the morning. Mr Cooke would like the floor for a period of time.

Mr D. S. Cooke: Just very briefly, we were going to accept—I appreciate the chairman's flexibility—a brief from the Windsor and District Labour Council, but after making all those arrangements the president is not here today because of a death in the family last night. With your indulgence, they will submit within the next week or so a written brief to the committee. We appreciate your co-operation in helping us out.

The Chair: No problem. One other thing before we come back at 1:15 this afternoon. Tomorrow morning from 8:30 until 10 o'clock, the documents the parliamentary assistant talked about, I guess, when we were together a week or so ago, along with ministry staff, will be available in room 151 for briefing.

The committee recessed at 1212.

AFTERNOON SITTING

The committee resumed at 1316 in the Erie and Huron Rooms, Hilton International, Windsor, Ontario.

The Chair: I am going to recognize a quorum and continue the bad habit that I have of starting on time and welcome to the committee the Essex Law Association. The clerk has distributed copies of your presentation, gentlemen. If you would like to come forward and identify yourselves, we have got 15 minutes for your representation. If you could leave some time for some questions, comments and discussion, we would appreciate that. For the benefit of Hansard, could you could identify yourself and then please proceed.

ESSEX LAW ASSOCIATION

Mr Donaldson: We appreciate the time granted to us. My name is Walter Donaldson of the Essex Law Association and I have with me Sheldon Miller, who is a plaintiffs' lawyer from Michigan. Mr Welch describes him as one of the most knowledgeable people with respect to no-fault insurance in the state of Michigan, if not in the United States.

You have our brief. I think I have raised some issues that have not been discussed today or at some of your other hearings and I hope you will read them. But we have felt that the issue with respect to the no-fault threshold system in Michigan is such a vital one that we would like you to hear from Mr Miller on his views as to how it is working or not working in Michigan.

As I indicated, he is a plaintiffs' lawyer. I do not think Mr Welch indicated to you that he does defence work. He acts for the insurance companies, AAA Michigan. You have also heard from them; that is, directly from the insurance industry itself. I can advise you that I do defence insurance work in the province of Ontario as well and I am dead against this bill.

Without anything further, I will introduce Mr Miller. He has given evidence at the Kruger commission. He teaches at three separate law schools, teaches a course in no-fault insurance in Michigan, at Wayne State University, Detroit College of Law and the University of Detroit. He also was co-counsel on the constitutional challenge in the state of Michigan against its no-fault law, and that involved litigation that went from 1973 for six years, up until 1979, before there was an actual decision.

There is going to be a lot more legal action because of this proposed bill. Without anything further, I give you Mr Miller.

Mr Miller: The first thing I would like to say is that if your legislation passes, I would like to know where I could buy an insurance company, to tell you the truth, because that has to be the biggest, best business in the world to be in.

In October 1979 the United States government was considering whether there was a need for a change in our system nationwide, and the General Accounting Office did a study on the profitability of automobile lines of the insurance industry. This is different from what they charge in premiums. This is actually because sometimes they claim losses. As we all know, figures do not lie but liars do figure. So the United States government looked at the automobile lines to see. It turned out that from 1978 to 1987 the insurance companies made on the automobile line an after-tax earning of \$22.5 billion, yet we are faced continuously—as you just heard Mr Wild testify on behalf of AAA, they want to raise the threshold in Michigan. They want to pay less folks benefit than they are paying now. They have introduced legislation to cut down the no-fault benefits that people are given and they want to raise the threshold to throw more people, more innocent victims, out of court from getting their rights. So it is a neverending battle with these people because it is not an interest in the welfare of the consumer; it is strictly bottom-line profits. Anything to make profit is what they are interested in, as was pointed out by some of those questions. It turns out, of course, that this is why they like a no-fault deal.

For someone to come here and testify that a piece of paper passed by our legislators automatically entitles people to get no-fault benefits just is not looking at reality. I cannot tell you how many lawsuits there are where people have had to sue for no-fault benefits in the state of Michigan. I can tell you that in our second-highest appellate court—without going into a great definition of our court system, we have a four-tiered system, from a district court to a circuit court—on claims under \$10,000, circuit court—then to the Court of Appeals, if the Court of Appeals deems to take that case, and finally to our Michigan Supreme Court. In the last 10 years we have had 409 cases go up through the Court of Appeals and another 42 cases went to the Michigan Supreme Court of people who have had to sue all the way through

the court system to get their no-fault benefits. I cannot tell you how many cases there were on the trial level, but I would assume there are as many cases filed where people are suing for no-fault benefits as there are people who have sued for tort benefit.

We do have penalties for no-fault insurance if the carrier does not pay. The benefits the people get in addition to what they would be awarded in court for their no-fault benefits can be 24 per cent interest compounded annually. There are two different sets, of 12 per cent each, which would give you double your money in three years and actual attorney fees. Yet with those kinds of penalties facing insurance companies, they still find it in their hearts not to pay benefits. I do not care what kind of legislation you pass; insurance companies make money by holding people's money. They hold the money and they do better than by paying off these benefits. So whatever penalties you can impose still are not going to turn somebody honest.

Frankly, we have a contingency fee system which will give poorer folks keys to a courtroom. I cannot even envision a person in this country or province having a claim for \$3,000 or \$4,000 and getting a lawyer, and the insurance companies would know that. It is incredible to me. We have a difficult time on a contingency fee system in accepting those kinds of cases. Even though the client does not have to put any money out, we have a tough time as lawyers taking those kinds of cases even if we know we are going to win ultimately and be awarded the attorney fees—maybe we are going to be awarded the attorney fees.

But if our clients have to pay us on an hourly basis, win or lose, without any assurance or guarantee that a court is going to give them the no-fault benefits, there is absolutely no way in the world these people would ever bring claims, and so we would have the insurance companies really ripping off the consumers here on no-fault benefits because there is no redress for the citizen who does not get his no-fault benefits. You would have to put in penalties a hundredfold in order to entice somebody to put up some of his own hard-earned money to get into your court system, and particularly when you are dealing with people who are injured and do not have any wages coming in. The no-fault carrier is not giving them their wages, their medical expenses are not being paid, they are at the lowest ebb of their life economically, yet in order to sue the people who are withholding their benefits from them they are going to have to pay a lawyer in

advance, win or lose, to get those benefits. This is just a field day for insurance carriers to rip off the consumer under the guise of a system that is going in fact to reduce premiums. It is not going to reduce premiums.

Second, I cannot question the wisdom of the government in proposing such a plan, but one of the biggest incentives that we had in the United States for going to a "no-fault" system was the fact that it was perceived that some victims of automobile accidents were not getting the necessary medical care because they did not have adequate insurance. That was in fact the basis of a Department of Transportation study in the late 1960s, that a number of folks in some states in our country did not get adequate medical attention. You have OHIP here. Why you are considering a plan where your folks are already protected in the event they are injured is just beyond my comprehension, but you can do whatever you want. To look at your system, I have always thought, right across the pond from you, I have respected this province as being so much more civilized than our system. But I guess that was in error because we would not even consider this piece of garbage that is being proposed here.

I would welcome any questions. I could spend days pointing out the errors here.

Mr Kormos: I notice in today's Windsor Star remarkably there is a big ad that talks about "Car Insurance, Myths and Facts." When I saw the headline I thought: "Well, I'll be darned. Somebody here in Windsor is going to tell it like it like about this bit of garbage," as you call it. Then I saw that it is produced by the Insurance Bureau of Canada. I will tell you where I have seen these before. I have seen them down in Toronto in all three daily newspapers simultaneously, where the total publishing cost per day is somewhere between \$30,000 and \$40,000 a day and they were doing these one day, miss a day, another day. I said to people who were in front of the committee: "You wondered where your car insurance premiums were going to? They're paying for this kind of advertising."

I have to tell you, Mr Miller, this ad, like so many others I understand—the American Trial Lawyers Association, which really was born for wonderful reasons, and all the good reasons, and it does what it does for the victims. But here this dumps all over lawyers too, because it says some pressure groups oppose the government's plan and they have mounted an extensive media campaign. Then they talk about how much money lawyers get. But they do not talk about the

other groups here in Ontario that criticize the legislation—consumers' groups, trade unions, lawyers, doctors, groups that are advocates for the handicapped and groups that are concerned with psychological injuries, head injury associations. It is not just lawyers here in Ontario who oppose this legislation. It is fairminded, clear-thinking people from all walks of life. Interestingly, the only people by and large who have come before this committee—and I know the committee has had a hard time finding people to support the legislation, but it found them among the insurance industry—saying this is good legislation is the insurance industry.

We have got some interesting scenarios here in Ontario. The insurance industry just happened to give to members of the party that governs and that is trying to put through this legislation in excess of \$100,000 in campaign contributions in the last provincial election. Some the recipients of that largess are right here on this committee. Indeed, the same industry spent tens, surely hundreds of thousands of dollars on its own advertising campaign against the opposition party in the last general election. That is in excess of the contributions they made.

The only thing I can figure is that this legislation is going to generate windfall profits, just incredible profits, for the auto insurance industry because it is going to rip off innocent victims. It is going to rip off drivers by charging them bigger and bigger premiums. Indeed, we are promised now. First they started at eight per cent. Now we are promised premium increases of eight to 50 per cent. Not eight per cent any more, eight to 50 per cent. That is in the first year alone. Holy cow. I cannot think of anybody who should be supporting this other than the insurance industry and those people who own big chunks of stock.

1330

Mr Runciman: I do not know if you were here this morning. We had a couple of witnesses before us from Michigan. The last one was a gentleman from AAA.

Mr Miller: I was here during his.

Mr Runciman: He made some comments and I took strong issue with what he was saying. I would just like to give you the opportunity perhaps to respond to some of the comments he made.

Mr Miller: He started off with the 1982 interpretation by our Michigan Supreme Court as saying that was the good interpretation. What he did not tell you was that from 1973 until 1982 we

had the threshold that we now have. In other words, in 1982 there was a change for the worse; a tightening of the threshold, if you will, from the times he described. Four years later, when the Supreme Court revisited what it had done in 1982, it talked about a social experiment that had failed.

In other words, they had eliminated so many innocent victims from their right to collect pain-and-suffering damages by having a threshold that is not one fifth as bad as yours is that the Supreme Court said it had acted absolutely improperly four years previously because it was cutting out people who suffered multiple broken bones and had changes in their lifestyle for the worse, continuous pain and suffering and all kinds of disabilities and yet did not reach a threshold. And our threshold is absolutely nothing compared to the one that is proposed here. So the members of the Supreme Court, in revisiting it in 1986, their conscience bothered them, I gather, and they went back to the way the law had been for the nine years preceding that. He did not mention those nine years before then.

I am not a big fan of no-fault in that in order to give the benefits, which I am a fan of, you have to take away the rights from the innocent victim. The higher the threshold, the more innocent victims lose their rights. That always seemed to me like a barbaric kind of system. In order to give the drunk who runs into an abutment certain wage loss benefits and medical expenses that he is not now entitled to, you take away the rights of the innocent victim to get some pain and suffering and human loss that he suffered. That does not seem to me like a civilized balancing of what you would want to do. If in fact you want to take care of the person who causes the accident and give him more rights than you have now, then I suppose that should be something that should be borne by all society, not just borne by the innocent victims who lose their rights.

Mr Kormos: Right on.

The Chair: Thank you for your presentation.

From the Ontario Mutual Insurance Association—the clerk is distributing copies of the presentation—I have Mr Johnson, Mr Perry and Mr Bailey. Gentlemen, you have half an hour. If you could leave some time for some questions, comments and discussion, we would appreciate that. For the benefit of Hansard, if you would identify yourselves and then proceed, we are in your hands.

ONTARIO MUTUAL INSURANCE ASSOCIATION

Mr Johnson: My name is Glen Johnson and I am the president of the Ontario Mutual Insurance

Association. That is a staff job. We have a staff of eight individuals and our office is in Cambridge.

Mr Perry: My name is Ron Perry and I am manager of the Lambton Mutual Insurance Co in Watford, Ontario. We are one of the 51 members in the Ontario Mutual Insurance Association. This year, I am also a chairman of that association.

Mr Bailey: My name is Dave Bailey. I am the underwriting manager for Farm Mutual Reinsurance Plan Co. We are wholly owned by the farm mutuals. I sort of give some direction in the automobile program to those companies.

Mr Perry: I would like to start off by reading our brief and then we will be open to questions.

This brief is presented on behalf of the members of the Ontario Mutual Insurance Association, commonly referred to as farm mutual insurers.

A mutual insurance company is one which is owned by its policyholders. The policyholders elect a board of directors, usually six, nine or 12, from among themselves to direct the company's operation. Profits are not paid to outside shareholders. Instead, any profits realized remain in the company's surplus account or may be returned to the policyholders on a pro rata basis as a refund from surplus from time to time.

The farm mutual companies are provincially licensed and operate strictly in Ontario. They are local in nature and most carry the name of the county or township they predominantly serve. The size of the farm mutuals ranges from about \$400,000 of gross premiums and about 1,000 policyholders up to \$21 million of gross premiums and about 25,000 policyholders. The average writings per company is about \$2.7 million. The total assets of the mutuals are about \$340 million, with investments totalling over \$250 million, most of that invested in Ontario and all in Canada.

Most of the mutual insurance companies in Ontario were formed in rural areas between 1850 and 1900 to provide fire insurance coverage for farmers. When the mutuals were first formed, each policyholder would sign up to more or less pay his pro rata share of any other policyholder's loss, in turn for the other policyholders' promise to cover his losses. Premium notes were signed, and in the event that one policyholder suffered a loss, the others would then contribute their share. Over the years, this procedure gave way to the present system of paying premiums in advance, investing funds and paying claims and administration costs out of these accumulated funds.

The Ontario Mutual Insurance Association was formed in 1882 as the Mutual Fire Underwriters Association. Ontario's farm mutuals formed their own reinsurance company, the Farm Mutual Reinsurance Plan, in 1959. They also formed their own guarantee fund or compensation plan, the fire mutuals guarantee fund, in 1975, at which time the requirement of premium notes was discontinued. In effect, the guarantee fund puts the assets of all the farm mutuals behind any one.

Although the farm mutuals started out as purely fire insurance companies, they now write most lines of general insurance.

In 1978, the farm mutual insurers entered the field of automobile insurance and there are currently 36 mutuals offering automobile insurance. In total, they wrote just under \$40 million of premium in 1989, which is about 28 per cent of their total premium writings.

As mutual insurers, we are charged with the responsibility of keeping the best interests of our insureds, the owners of our companies, foremost, and at the same time managing our business in such a way as to keep our companies financially secure.

Over the past two years, we have listened to many scenarios and proposals for the alleviation of Ontario's automobile insurance problems. We have taken to heart the arguments of the insurance industry as well as those of the legal profession and consumer groups.

It is our conclusion that there is no perfect answer. It is not reasonable to expect uncontrolled, nonpecuniary settlements and at the same time controlled prices. We would like to see a system that delivers timely, adequate benefits to any individual injured in an automobile accident, whether or not that person was the cause of the accident, and at the same time maintain a strong element of deterrence towards irresponsible operation of an automobile, and we would like to see that this is done at an acceptable price.

We believe Ontario's motorists have a right to assume a reasonable amount of protection if they have the misfortune of being struck by a fellow motorist who has erred. However, it is not unreasonable to ask those who use Ontario's roads to assume some of the risks which go along with living in a prosperous province whose population continues to grow, making our roads and highways increasingly crowded, particularly in the large urban centres. We consumers have to expect that with increasing traffic, there is an increasing probability that cars will collide with each other. The people of Ontario must under-

stand that along with the privilege of sharing our many highways, we must also assume at least some of the risk involved.

1340

We also firmly believe that people of Ontario must be made aware that prices will be dictated by costs. Ontario's consumers must expect premiums to rise along with costs of supplying the product.

The Ontario Mutual Insurance Association believes that the proposed Ontario motorist protection plan is a valid approach to controlling the cost of automobile insurance in Ontario while providing quality and timely benefits to those suffering losses due to automobile accidents. We particularly express our support for a multi-faceted approach which recognizes that the real solution lies beyond the actual auto insurance policy and requires emphasis on long-term solutions, including accident prevention.

One area where we feel the proposal falls short is that it should include more emphasis on education, with definite proposals in that area. We would like to see more emphasis on the use of education for loss prevention purposes by way of a compulsory, structured driver training program which would include a component aimed at explaining the cost of the system, the fundamentals of how insurance works and instruction on the coverage provided by the Ontario statutory automobile insurance policy.

We believe that the government must recognize that almost every high school student in Ontario will eventually operate an automobile on the ever-more-congested roads of our province. Therefore, we believe a major part of the long-term solution is to make appropriate instruction mandatory in the curriculum of all of Ontario's high schools.

We agree with the accident prevention initiatives being taken, including increasing enforcement, increased fines for traffic offenses, severe sanctions against drunk drivers, increased education for seatbelt usage, mandatory daytime running lights on new vehicles, highway improvements, freeway traffic management and workplace educational efforts. All of these initiatives are part of both the short-term and long-term solution.

It is our opinion that the insurance coverage provided by the proposed plan is viable. It will provide more certainties to the consumers as to the benefits to be received and more realistic expectations to the supplier of a product as to its costs and long-term business opportunities.

We recognize that determining the appropriate tradeoff between premium affordability, the limited right to sue and the extent of first-party benefits is a complex one. It would appear that the greatly enhanced first-party benefits of the proposed system will be a great improvement over the current system. The new system will provide for all injured parties to be treated alike with respect to first-party benefits, whether or not they were the cause of the accident.

It is our opinion that the motorists of Ontario will prefer the nonadversarial system of claiming for bodily injury claims which would be instituted by the Ontario motorist protection plan. Guaranteed benefits will be paid quickly. This will be ensured through the increased clout of the insurance commission to levy substantial penalties against insurers not delivering proper compensation in the appropriate time frame.

The proposed process of mediation and arbitration will see disputes over accident benefit compensation resolved quickly and the onus will be placed on insurers to pay both income and medically necessary rehabilitation costs pending the dispute resolution. In the consumers' interest, we strongly recommend that the government establish regional offices throughout the province to handle the alternate dispute resolution process.

We believe that this proposed system, in which the insured need only deal with his or her or own insurer, will result in competition among insurers to provide better first-party service than their competitors. With the inadequate first-party coverages of the current system for accident benefits, there is less need or incentive for insurers to focus on claim service as a major competitive factor. Certainly there is little or no incentive to compete on claims where third parties are involved. With the increase in first-party accident benefits, insurance companies and adjusters will be motivated to develop more specialized and efficient medical and rehabilitation specialists. There will be increased need for companies to compete based on service, not just price. We think that this competitive process will result in efficiencies that will benefit consumers.

We also agree with the increased emphasis on first-party rehabilitation. We believe that this system is more conducive to the wellbeing and eventual rehabilitation by the injured party than is the present adversarial system. The current system, by its very potential for long delays, may not provide a means to rehabilitate quickly. The question of fault has to be dealt with first. Resolving this question may take many months.

Where delays are created, costs are added to the system, both social and financial, as an effective program of rehabilitation may be started too late or not started at all.

Along with our philosophy that those who use Ontario's highways must assume some of the risk of doing so, we also believe that all motorists, no matter how conscientiously they operate their vehicle, are subject to human misjudgement or error and should have access to adequate benefits, even if they are at fault. It seems logical to us that every insured driver, regardless of fault, should be eligible for guaranteed benefits from his or her own insurance company. At-fault drivers guilty only of misjudgement or normal human error will need weekly income replacement and medical and rehabilitation protection as much as not-at-fault drivers.

By insuring predominantly rural drivers, we believe the mutuals will deal with a greater percentage of single-vehicle accidents than companies with more urban insureds. Drivers involved in single-vehicle accidents will benefit from the enhanced first-party benefits and more dollars will be available in cases of serious single-vehicle accidents involving a number of passengers.

In a review of all open auto claims reserved over \$100,000, as of 1 January 1990, 82 in total, we discovered 30 per cent involved single-vehicle accidents. The drivers, all of whom would be considered at fault, would receive very limited benefits under the present system and would certainly receive much better compensation under the proposed system.

Also, under the proposed system more adequate benefits would be available to the injured passengers, each of which would have available to them \$500,000 of medical rehabilitation coverage and \$500,000 of long-term care plus loss of income. Under the current system, even if the passengers could sue for passenger hazard, it is quite probable that in a serious accident involving numerous passengers, the driver's third-party liability insurance protection would be inadequate.

As we stated earlier, we believe that any system must maintain an element of deterrence to irresponsible operation of automobiles. These individuals should face severe sanctions by way of fines, jail sentences and demerit points, as well as substantially higher insurance premiums, in accordance with the hazards they present to the system.

We agree that those convicted of impaired driving offenses should not receive income

replacement. As we understand the mechanics of the proposal, drunk or uninsured drivers would receive full benefits until convicted. This could involve extensive payout to a nonentitled claimant who in some cases may not be able to repay benefits received up to the date of conviction.

We do not believe these individuals should receive full benefits until convicted. We would like to see a compromise by way of a partial payment of loss-of-income payments from the time they are charged until they are convicted, and if not convicted, full retroactive compensation.

With respect to level of loss-of-income benefits, we agree with \$450 per week, which would cover a gross salary of almost \$30,000 per year. This would insure most of Ontario's workforce. However, suitable optional benefits would have to be made available and the stated per week basic limit should be adjusted annually for inflation.

It is our opinion that it is reasonable to maintain the right to sue in cases of serious injury involving "death, permanent serious disfigurement or permanent serious impairment of important bodily functions caused by injury that is physical in nature." We feel that this definition of serious injuries is a sensible threshold and are confident that it will not be eroded by the court. Those individuals with serious injuries will have access to the courts as before, while the threshold will provide cost control for less serious injuries and the enhanced accident benefits section will provide the necessary benefits on a more timely, first-party basis.

Further, we believe Ontario's consumers will agree with the changes proposed to the Courts of Justice Act, which will limit double recovery, excessive prejudgment interest payments and unnecessary awards for gross-up of lump sum settlements to cover income taxes.

1350

Government controls on insurance premiums without addressing the claims costs will not result in long-term solutions. The Ministry of Financial Institutions has indicated that, without reform, increases of 30 to 35 per cent could be experienced by motorists when the current cost controls expire. The Ontario Automobile Insurance Board found that since April 1987, when rates were controlled by government restrictions, claims costs have increased by about 30 per cent while rate increases totalled 16.5 per cent, compounded on an inadequate base.

In our opinion, the Ontario motorist protection plan is a balanced compromise which will help to

stabilize costs and hence premiums while in many cases providing better benefits to consumers on a more timely basis and still allow the right to sue in cases of serious injury. It is a compromise, but we feel it is a logical compromise that can work satisfactorily. This proposal should enhance competition among insurers to provide the best service at the best price. It would be naïve to think that there is a perfect answer. We see the Ontario motorist protection plan as a compromise which gives adequate benefits at a reasonable price.

The Chair: Thank you.

Mr Kormos: Your proposition that those people who use Ontario's roads and highways should assume or share some of the risks which go along with living in a prosperous province is perhaps not totally unattractive. But surely, a 12-year-old kid walking home from school who is hit at a crosswalk by a drunk driver; whose back is broken and spends two years recovering and who will not under this scheme receive one penny by way of compensation for pain and suffering or loss of enjoyment of life; who will receive not one penny in deemed wage replacement, not even \$185 a week who will receive not one penny in compensation for his two years' delayed entry into the workforce—do you really think it is fair that a 12-year-old kid should help subsidize the system?

Mr Bailey: I believe there are situations—again, we are looking at balance. For the young gentleman you described who is seriously injured, sometimes, I think—we are looking at the policy—with some of the benefits under the accident benefit section on the long-term care, I think he would benefit on that side. Talking about the loss of his possible future earnings down the road, reading the accident benefits, I think you could almost read into it on rehabilitation benefits that he could receive tutorial costs back, even if he could not get to school. With respect to the question of the pain and suffering, it may well end up being a permanent situation with him, that serious an injury, and go through the threshold.

Unfortunately, I was up north on the weekend and had a little incident where I hit a patch of absolutely sheer ice and I went off the road. I went off into one ditch, out of that ditch and across the highway and into the other ditch. Very fortunately, I was in a reasonably safe car and I was not injured, nor was anyone else. But, you know, to me, at that point, I did not think I was really a negligent driver or anything else. With snow covering on the road, I was going at a very

reasonable speed, but totally lost control. Had I had my son with me at the time and had he been badly injured, his compensation today is very, very restricted. I think you have certainly less benefits available to him today than what he would have under this proposal.

Mr Kormos: That is debatable. His lawyers would have a lot to say about that. I guess that is why you guys do not want lawyers involved.

You talk about the definition of serious injuries as being a sensible threshold. You seem to imply that this will exclude those petty little claims, the ones that are mere nuisance claims. But the fact is this threshold would exclude broken legs, broken arms, fractured skulls, any number of injuries which, over time, will heal, but which, notwithstanding that, are serious, painful and debilitating. How can you call this threshold sensible when it is going to exclude so many serious injuries, when basically you have to be dead or damn close to it before you pass the threshold? We have already heard that this is the most onerous, draconian, unconscionable threshold that has been proposed in any part of the world where they have these types of thresholds. How can you see it as sensible when other people have said this is the most severe threshold and it is going to exclude real serious injuries?

Mr Johnson: I think we have to recognize that it is a tradeoff, and we have said that in our brief. Getting back to your first question, you have to also recognize that there are greatly enhanced first-party benefits. If that little boy had run out in front of your car, and you were not at fault but he was, what is the situation there? I think this is what is being ignored.

Our purpose here is to tell you what we think of this proposed plan. We recognize that it is a tradeoff. We recognize that cost is a concern to Ontario's residents, to Ontario's consumers, but we see this as a valid tradeoff. Why does pain equal money in the first place, if you want to get right down to it?

Mr Kormos: Ask some of the people who have come in here suffering from it and they will tell you that it is not an adequate compensation but it is as good as we can get in a civilized society. Until you can take away their pain, you are better off giving them a little bit of money to make up for the loss of enjoyment of life. Most of us will never have to experience that. That is a really unfair statement. You are spitting on most people who suffer.

Mr Runciman: I want to endorse what Mr Kormos just said. That is a very telling comment

from a representative of the insurance industry. You are suggesting that why should you compensate for pain and suffering. If you sat through the hearings on this process and had the kind of emotional, moving testimony that we have been able to hear—and you are in the insurance industry. I think that certainly tells volumes about the people in the insurance industry when you make a comment like that.

I want to express another concern here. You are representing, in some respects—I do not know what the volume of business is in terms of the farm or the agricultural community, but I represent an essentially agricultural riding and I have farmers coming in to see me quite frequently. I had one in last week whose income, in terms of taxes, was around \$6,000 a year. That is what he is clearing after taxes, etc, whatever.

I guess I am concerned about someone—and many of these farms are operating on a marginal basis at best—a farmer who is out on the road and is hit by a drunk driver, for example, is laid up for eight, 10 to 12 months, what have you, recovering from those injuries, and you guys are saying, “Well, this no-fault is going to be enough to carry him.” These guys are marginal operations. We can apply this to small businesses throughout the province, but I am just talking specifically about the agricultural community. What is going to happen to those operations, those farming businesses? They are going to go down the tube. That is what is going to happen to them.

Mr Perry: I think we are probably getting a little offtrack in one sense here.

Mr Runciman: Well, you are supposed to be standing up and representing the farming community. That is what you purport to do. You are not doing it.

Mr Perry: First off, let's get back to the initial problem, which is that the people of Ontario say they cannot afford to pay any more for car insurance.

Mr Runciman: Baloney. As has been said on numerous occasions, we do not have to throw the baby out with the bathwater. That is what is happening here.

Mr Perry: I know our insureds, when they talk to us, are certainly not happy with rates at where they are now and they cannot see that they can afford to go up any more, and yet claims are continuing to rise under the present system.

Mr Runciman: The minister says they can go up as high as 50 per cent under this proposal.

Mr Perry: Obviously we have to decide where it is that we are going to saw off between what we want to pay for and how we want to be compensated.

Mr Runciman: You are not addressing my questions. You are going on with the usual sort of thing that we get from insurance companies every day.

Mr Perry: But if you want me to come back and relate to you on a farm what is going to happen to the farmer—

Mr Runciman: Yes, I sure do.

Mr Perry: How about the farmer right now who has a problem where he is involved in a serious accident as a first party and he is at fault himself? Where does his compensation come from under these set of circumstances? We are thinking about the farmer who is out there—

Mr Runciman: Well, we have no-fault benefits currently, and we have endorsed the raising of no-fault benefits. Justice Osborne suggested the raising of no-fault benefits. But you are saying to throw out tort and what you are doing is standing up here defending the people at fault and throwing the innocent victims out the window. That is what you are suggesting here.

I want to say one other thing. What about the income levels we are talking about? I may be fumbling in the dark in some respect on this, but we are talking about \$450 a week and we are talking about many of these farmers who, as I said, are going to have incomes of \$1,000 or \$2,000 a year or losing. How is that going to impact them on that basis?

Mr Perry: I think you have to be very careful not to interpret the bottom line off an income tax form as being the true income of a farmer.

Mr Runciman: Would you tell a farmer that when he is dealing with an insurance executive? Come on, get realistic.

1400

Mr Perry: There are wages and there is farm income and the two of them cannot be interrelated. We fully understand that farm wages are an entirely different thing than farm income.

Mr Runciman: You are not adequately representing the farmers in this province by standing here today and making comments as you have.

The Chair: Order.

Mr Runciman: I am very much upset.

Mr Perry: I think we definitely are. We have been in business for 110 years and farmers are seemingly very happy.

Mr Runciman: You have a representative saying, "Why should people be compensated for pain and suffering?" That is a great representative here before this committee.

Mr Johnson: That is not what I said.

Mr Runciman: That is what you said.

Mr Johnson: You guys ask questions and you do not listen to the answers.

Mr Runciman: We listened quite carefully. I think we all heard it.

The Chair: Order. Maybe just on a point of clarification, you would either wish to clarify or restate what I thought you said.

Mr Runciman: Maybe rescind.

The Chair: Go ahead.

Mr Johnson: I certainly did not say that we should throw out tort, nor that injuries should not be compensated. I merely asked Mr Kormos, "How do you equate pain with money in the first place?" We certainly want to see serious injuries treated. There is no free lunch here. That is what we are saying. You cannot have increased first-party benefits, maintain the tort system that we have and control prices. That is the bottom line.

Mr Solá: Just to carry on, you state that the Ontario consumer must be made aware that prices will be dictated by costs. Obviously that message has not got across either to the opposition parties or to the public. How can the industry do that and be credible? Apparently, nobody believes the bottom line that insurance companies have been losing money on auto insurance despite the various studies that have been made on that.

Mr Perry: I think we have gone through the Ontario Automobile Insurance Board hearings for the last several years. Certainly everything has been examined from A to Z on the industry. I think the industry has done an adequate job of showing that the amount of money it is collecting and the claims that are being paid, that there are serious problems there, that premiums are indeed justified and this is why we are emphasizing in our brief so much that we think there has to be public education as to how insurance works.

I am sure people do not understand it. We feel it has to start at the school level. Most people, their first meeting with the insurance company is they turn 16, they get their driver's licence and they start to drive cars. They get driver education, they get education on every other facet of what it takes to live in society but where do they ever learn about insurance, what an insurance

policy is, how it works, incurred claims, premiums, all of this kind of thing? Where is that ever addressed? Yet it does not matter what you do in society today, whether it is property insurance, auto insurance or whatever, you are going to be involved with insurance and insurance policies.

We feel that until the consumer can get an adequate understanding of the concept of how insurance works, how claims are set up, how reserves are there, how insurance companies are required to manage money in a responsible manner so that people can be compensated at a time of loss, we are going to continually run into these kinds of problems and headaches through ignorance, if I can use that term, and they are going to constantly be persuaded by people, like what we are hearing here right now, who continue to twist and work the facts.

Mr Solá: Also, you seem to be confident that the no-fault benefits will be paid quickly. Were you here for the delegation before you, where they stated that even today for many no-fault claims in Michigan they have to go to court to acquire them? Do you see any problems with the mechanisms that are being proposed in ensuring that those payments are made quickly?

Mr Perry: I do not see any problem with that. I think the industry will try to gear up to that very quickly. I think it is the bottom line with the insurance industry to provide service. We feel that this will strengthen competition, that if a company is lagging and the next company down the road is paying, that word is going to get around pretty quickly. So everybody is going to be in a somewhat competitive spirit to try to provide that service.

The threshold is going to be up to the courts, of course, as to how they interpret that threshold and at what level. We are hoping they will continue to hold that threshold fairly high. Otherwise, if we end up getting back into everything going into the courts again, we are going to be right back to where we are now with escalating insurance costs and this new system will not work.

The Chair: Just before we leave, I think we have a point of clarification. I have a number of farmers in my riding as well where their income tax or their actual farm gross is, in some cases, not more than \$7,000 or \$8,000 a year. The parliamentary assistant may want to clarify what minimum benefits in terms of income replacement farmers may find themselves in, in terms of what they would be eligible for.

Mr Ferraro: This was brought up last week. In the event of a farmer who hypothetically is only making \$6,000 or in the event, if I may add, of a youngster who is working part-time, for example, the minimum payment to these individuals would be \$185 a week, which is net of taxes or deductions, and on an annualized basis it would be somewhere around \$9,600. I just want to point that out.

Mr Runciman: That will keep the farm afloat, \$185.

Mr Kormos: Who pays for the farm help?

Mr Bailey: Mr Chairman, just to address the question that was asked on the record, we would also propose that we be permitted to make available, not just to the farmer but to any self-employed individual, and I think this is one of the major concerns, a type of coverage, if you would wish to call it an extra expense coverage, that would be a bit—

Mr Runciman: This is a real surprise.

Mr Bailey: Maybe it is to you, sir, but I would like to state my case, if I may.

Mr Runciman: This is self-evident. I think it is redundant to state that case.

Mr Kormos: Why just pick one pocket? Pick both pockets.

The Chair: Order.

Mr Bailey: Our intention would be to provide a means by which an individual would be able to purchase, at a reasonable cost, an extra expense coverage should he or the named individual be injured, extra costs being that which you would have to pay to get subsequent labour to handle work that you would normally be doing or other expenses that would become involved. We also believe, for the most part, that—

Mr Runciman: How does that tie in with lower insurance costs?

Mr Bailey: It helps the man keep his business afloat, whether he is at fault in the accident or not. But we also look at this coverage possibly should be written on a broader base than accident.

The Chair: Thank you very much for your presentation.

Mr Kormos, you wanted a point of interest for the committee?

Mr Kormos: Please, Mr Chairman, I have to leave. I want to apologize to the people who are making submissions. Dave Cooke of course will be here. We tried to get around it but it was unavoidable, so as I say, I apologize to the people

who came here. I will be reading your submissions and reading the Hansard.

The Chair: The next presentation is by Sheila Masse. I do not think there is any written material, so the committee is in your hands for the next 15 minutes, Mrs Masse. If you would identify yourself and the gentleman with you and if you could leave us some time for some questions, comments and discussion, we would appreciate that as well.

SHEILA MASSE

Mrs Masse: My name is Sheila Masse and Robert Leschied is representing me. He is my lawyer in the accident that I was in.

Mr Leschied: Can I just add that I did file a written summary, if you have it, for Mrs Masse. In addition to that, I prepared an analysis of Mrs Masse and her family's recovery within the tort system as found by the Supreme Court of Ontario and what I believe it would be under the proposed legislation. I think it is significant to analyse the two.

1410

Mrs Masse: I was a registered nursing at Country Village nursing home at the time of my accident and I was on my way into work. I was a passenger in a car when he lost control of the car and I was injured. I had neck injuries, I had right arm, left arm and lower back, and the pain radiated down my leg. I have been off work ever since. I cannot lift any more than 10 pounds, so I lost my nursing career over this accident.

At first the insurance company paid me \$140 a week for the first two years. Then they just quit paying. We could not survive without my income, and two years after my accident my husband had a heart attack and had to have open heart surgery. He is not able to return to work. So we are living on an income of \$1,400 a month. We have three teenagers, and now they are at the age of university and college. If I did not go through with this court case, it would be impossible to educate them.

I cannot do my housework, the heavy duties. It also took away my social life. I loved to go dancing. That is down to the very minimum. If I go out for a social evening, it is usually very short because I still have a lot of pain and I have to cope with it. Right now the only thing I can do is I baby-sit in my home. Some days I cannot even move around that much, so I cannot go out and get a job because some days I am very limited in what I can do. So to pass some of my time and to make my life a little bit more important, I took up baby-sitting so that I can sit or lie down or walk

around or whatever I have to do, because I am limited from a lot of sitting or bending or standing. This way it helps me to feel important, that I can do something. So this is what I am doing right now.

Mr Leschied: Let me just point out that Sheila was denied benefits under the Canada pension plan. I have found, representing people like Sheila, that after their own auto insurer cuts off their benefits after two years, which in this case happened, living on \$140 a week is impossible. I advised Sheila and she applied to the Canada pension plan disability section. The importance of that is that the threshold stated therein is closely worded to the proposed legislation. "Permanent" and "serious" are the magic words to overcome obtaining a pension from Ottawa. Sheila's injury and disability were not considered by Ottawa's pension plan department to be serious and permanent.

At the trial of the action, the trial judge found that Sheila could perform some useful physical functions, albeit baby-sitting or store clerking, etc, and assessed her damages accordingly, which you have set out for you. The importance of Sheila's case, in my view, is that under the proposed system, although her injuries may be permanent, they may not be serious or they may only have been serious for a limited period of time. Having a nursing profession that she had worked her whole life towards after coming out of high school, that was foreclosed to her. And that happens in this day and age, one's hoped-for occupation is cut off for various reasons. The importance is that she was awarded compensation for the extent to which what she would likely do in the workforce—because she had to; she could not survive financially with her and her family—the difference between what she would have earned as a nurse's aide, and what she was deemed to have earned, not actually earned, but what she was deemed to have earned through a retraining program. Although it took six years to get to trial, it was found that within that period of time, Sheila was deemed to have earned an income that she did not have.

The point is, the analysis between what she was awarded by our court and what she would likely, in my opinion, have received if the present system was in effect is that, as you can see, Sheila and her family would be subsidizing, or giving up, somewhere in the order of \$150,000 to \$200,000. I say at the outside \$200,000, because she would have had to sue for those post-two-year benefits, and in fact I advised her to and she did, but during the time it

took to get to court, she subsisted on what her husband's disability pension was from Chrysler because of his heart attack and the goodwill of her family, friends and church in the Woodslee community where she lives, without which Sheila and her family would have been, in effect, sentenced to a financial death sentence. She could not have survived this system.

It is one thing to say, as I pointed out, "But Sheila, you might have received a greater benefit under the proposed system." You are right. For the first three years, her benefit would have been somewhere around \$300 a week, net, \$15,000 to \$16,000 a year for a family of three children, a disabled husband and herself. But after three years—not only did I find in Sheila's case did her own insurer cut her off after two, I find that in 99 per cent of the cases that I represent in this county and throughout Ontario, I sue for benefits after two years.

Is it fair to have a client or a plaintiff wait and finance the length of time it takes to achieve a pre-trial or a trial to have the issue determined by a judge? How do they survive in the meantime?

Sheila was denied benefits from the Canada pension plan. That is what they said about the threshold. The question that I ask this committee is, is it enough for Sheila and her family to give up \$150,000, \$200,000? Is that enough, or do you want her to give up more?

Mr J. B. Nixon: Thank you for coming and presenting this situation to us. I would not want the committee to be misled, but it is my understanding that under the standard automobile policy which everyone in this province is required to purchase right now, the no-fault wage-loss benefits, which are at a maximum of \$140 a week, are specified to terminate after two years, correct?

Mr Leschied: In two years, if he cannot return to the job he enjoyed at the time of the accident and if the insured, who has the onus, can demonstrate that he or she cannot perform any occupation, then that is the end of it. In Sheila's case, the court determined if she could perform any occupation.

Mr J. B. Nixon: But that is the major difference between the existing policy and the proposed policy. Under the existing policy they terminate after two years. Under the proposed policy they continue to age 65.

You come here and you talk about the situation that your client has found herself in, and it is a tragic situation and I think we all empathize with the suffering you have gone through. Your lawyer has told us about the extreme difficulties

that you and your family faced as you waited, from the time of accident to the time of judgement, being forced to rely on the generosity of family and neighbour and community. I find that unacceptable. I am outraged when I hear about that. I am outraged that that is the existing system in Ontario.

I think it should be changed. I think if someone says to me: "No, no, no, this is a good system. It works well. Leave it alone. The only problem is we're not charging enough for it"—we have got lawyers coming in here. They say: "It's a good system, a little tort reform here, a little fix there," but the consumers will pay more for it on whole, and you come and you have told us about a terrible, terrible situation. I do not think that is acceptable.

I think this program says something good to people like yourselves, in the situation you found yourselves in. You will not be thrown back into the community and have to rely on friends and neighbours. So I must say to you that I do have trouble with some of things you are suggesting.

1420

Mr Leschied: Let me ask you this, though. Under the present system benefits would be payable for lifetime but you have to qualify after the first two years. But under the proposed system, what is the qualification for lifetime benefits?

Mr J. B. Nixon: I will defer to staff on that, but the qualification has nothing to do with the existing incredible hurdles that your client has had to face.

Mr Leschied: The qualification—

Mr J. B. Nixon: With respect, rather than you and I debating in a slightly partisan manner what the legislation says, let's ask someone who has been involved in the drafting of it.

Ms Parrish: I hope that I will endeavour to answer the questions that you put entirely neutrally.

The way the current drafting of the accident benefit regulation works is that if a person is unable to do the job that he or she had at the time he was injured, he is entitled to the benefits for a period of three years. After that time, you are correct in saying that the test changes to a test that says that the individual is unable to be employed at a job that would be reasonably appropriate to that individual, based on his education, his physical condition and a number of other variables.

If an individual does work part-time, he is still entitled to benefits if the amount he receives from

part-time labour is less than the amount he would receive under the OMPP system. For example, if you had a person who returned to work part-time and made, say, \$100 a week working part-time, then there would be deducted from the \$450, assuming he was getting the \$450, 80 per cent of \$100, which is \$80. That would be deducted from the \$450 payment. There is a different test after three years.

Mr Leschied: That was the point I was trying to make. Thank you.

Mr J. B. Nixon: Keep in mind that that is quite a different situation than what you have now, where they are terminated after two years.

Mr Runciman: Again, I am disturbed by the fact that we have had moving testimony before this committee on numerous occasions, and this is another indication of a witness who has personally gone through a great deal and is coming here on a voluntary basis to make us aware of the situation in comparing the current system versus that proposed, and we again have a situation of a government member, with a smoke and mirrors effort, talking about no-fault benefits.

I think all of us agree with speedier delivery of the no-fault benefits and enhanced benefits, and this was part of Justice Osborne's report. He made those very recommendations, but he did not say, "Throw out tort." He did not say, "Throw out compensation for pain and suffering." He did not say, "Throw out compensation for future loss of income and pension benefits."

That is what makes myself, Mr Kormos and other opposition members quite perturbed when we sit through these hearings and hear that kind of a comment questioned and reference being made, again to try to deceive the public, "Look, we are genuinely concerned about speedier, improved benefits."

In fact, no one—no one—certainly not in the opposition party, disagrees with enhancement of no-fault benefits. We have had those no-fault benefits for over a decade. Let's improve them. Let's improve the delivery of them, but at the same time, let's not throw out the very great benefits of tort.

I am sure, Sheila, you would not be here if you did not feel quite strongly about it and the fact that you are not going to gain from this being retained. You are here because of your concern about future innocent victims.

Mrs Masse: Yes.

Mr Runciman: I very much appreciate your testimony.

The Chair: Thank you very much. Next we have David Arsenault.

Mr Leschied: You should have David Arsenault's written brief, summarized and mailed to the committee.

The Chair: When was it mailed to the committee?

Mr Leschied: Back in December, the second week.

The Chair: The clerk says no. Maybe if you have a copy of the letter that you mailed—

Mr Leschied: Yes, I do.

The Chair: —we will make sure that the committee gets a copy of it. If Mr Arsenault could identify himself and the other gentlemen who are with him, we would appreciate that.

Mr Leschied: Here is the letter to the clerk, 27 December, with his brief. This is my analysis of the impact on Mr Arsenault.

DAVID ARSENAULT

Mr Arsenault: My name is Dave Arsenault. This is Mr Leschied, my lawyer, and his partner, Mr Morga. I was 35 years old at the time of my car accident. I was rear-ended and hit head-on. I was working as a grocery clerk, earning about \$225 a week part-time.

As a result of the accident, I suffer from chronic cervical sprain, lumbar sprain, a possible wedge fracture, compression of the 12th thoracic vertebra, with possible neurologic sequel with respect to difficulty with erection. I underwent every form of conservative treatment, including therapy, medication, injection therapy, and I am presently awaiting admission to the pain clinic in London, Ontario.

I am very limited in sitting, standing and walking. I lost my job as a grocery clerk because I was unable to return to work. I also lost a stable relationship. I have developed chronic anxiety, depression and anger surrounding the stress of chronic pain.

I received lost-income benefits of \$140 per week until my Canada pension plan disability was granted. My monthly benefit is \$433. My goal in food services was to become a department manager in a major grocery chain and I had anticipated that my income would be approximately \$24,000 a year. Instead, my yearly disability income from CPP is now only \$5,200.

As I said, automobile disability benefits ceased upon receipt of CPP allowance. The tortfeasor who caused this accident has insufficient insurance to pay the claims of two innocent victims, including myself, and recourse was

made to my insurer under the uninsured motorist provision. My claim was settled recently, and successfully, to enable me the financial freedom to survive with an income that is now in excess of poverty level for single-income earners in Ontario and to allow sufficient funding to compensate for the extreme loss of enjoyment of life that this accident has caused. I am waiting admission to the pain clinic in London in February 1990.

Mr Leschied: David was unable to ever return to his job as a grocery store clerk. David's own auto insurer was so convinced that he was disabled that it cut him off two and a half years at \$140 a week, which forced David, because he had no other option, to go on public assistance through the good graces of the city of Windsor. With the help of the city of Windsor, he was a successful applicant for disability benefits under the Canada pension plan, which, as I said earlier, was, in my view, a recognition that David's case, for some people, would have exceeded the threshold of "permanent serious." Notwithstanding that, David's auto insurer took a different view and forced David to commence action.

The level of benefits paid from Ottawa, given David's present income, was little more than transferring David from the public assistance roll in Windsor to the roll in Ottawa.

1430

I think David's case is a reflection of many, many innocent victims I see and have seen in 15 years. However, if David's injury and disability was considered permanent but not serious or serious and not permanent, David's tradeoff would be from \$200,000 to \$230,000. Again, is that too much to give up?

I have analysed what, in my view, the present system would provide David, and that is, benefits as I have calculated. Nevertheless, I have demonstrated the tradeoff. It is not a tradeoff of a few thousand dollars. It is a significant tradeoff to enable David to return to himself the dignity that he enjoyed before this accident and some measure of financial security.

Mrs LeBourdais: I would like to comment both on this particular one involving this gentleman as well as the one on the previous testimony from Mrs Masse, if there is no problem, since it is the same lawyer who is involved.

I guess the point I would like to make with regard to David Arsenault's situation is that you have told us that he met the CPP threshold. It is my understanding then if he met that threshold, he would also meet this threshold proposed by

this system and therefore would be allowed to go into litigation.

I guess the comment I would make with regard to Mrs Masse, and it would be applicable if the case you had put forward for Mr Arsenault stood, is that I think it is worth while pointing out to your client and to anyone listening to this that it is predicated, first of all, on having a competent lawyer, second, having competent witness, and nowhere have you deducted legal fees. The dollars that are, in your samples, being awarded to the individuals fail to deduct any fees whatsoever, and I do not know if you have given us any indication of how long litigation was in process and how they were perhaps unable to begin some of the rehabilitation processes.

I am wondering if Ms Parrish might be able to take either case, perhaps Mrs Masse's, since there were more particulars on that one, and just, albeit quickly, go through some of the particular points you have made, because I do not feel that you are correct in your original analogy of the—

Mr Leschied: Let me just add this one thing. The items of damages were exclusive of pre-judgement interest and exclusive of party and party costs paid by the at-fault insurer. They were exclusive of prejudgement interest and exclusive of the costs paid by the insurer.

Ms Parrish: It is always difficult to comment, of course, on cases that you know much better than we do. Every case turns on its own facts and I do not want to substitute my judgement for someone who has a higher knowledge of his client's case, or indeed the physician of your own client.

I would point out as a matter of clarification, though, that for loss of household services—I am not sure what you mean by loss of household services. I suspect you mean the fact that people, when injured, are unable to do, say, their own housework or need special assistance in that regard. I think that is compensable under the no-fault schedule. So I just comment that I think that the \$1,500 is compensable.

The other point I would make is that on point 7, "future cost of therapy, medicine, transportation grossed up," I assume that is grossed up to reflect taxes. I just point out that under the proposed tort reforms that almost everyone has supported, of course, this could be the subject of a structured settlement. The reason that structured settlements are entered into is that they do avoid the one third tax cost. They are very costly and essentially are an additional cost to the system.

What the no-fault benefit schedule does is very similar to what a structure does. Essentially, it provides for the payment of these benefits immediately, as opposed to the payment in advance, then taxed and so on, which many people have found to be wasteful.

I am puzzled, to be blunt, as to the \$5,200 cost, because it seems to me that for the 10-year period you would expect to see exactly the same amount, unless you were anticipating that there would be medical therapy costs or transportation costs that would take more than 10 years, but I do not know, because I do not have the details.

I would also point out that claimants are entitled to transportation costs. That is a specific recoverable cost, not only for the individual but for family members who may be attending to see him or for visitors who may be visiting, perhaps if family members are ill.

In terms of Mr Arsenault's case, again, I would just point on a small point of clarification that the minimum benefit level is \$185 a week, so if 80 per cent of your gross wage is less than \$185, you still get \$185. It is only a small point, but I think it is one that people often misunderstand, that \$185 is the basic benefit which everyone gets no matter what. For example, if you have an individual who, say, works part-time and only makes \$100 a week, he is still entitled to the \$185 benefit.

In other regards it is difficult for me to comment in greater detail, because, of course, I do not have the same factual base as you and your client have.

Mr Morga: Can I just comment briefly? My name is Gino Morga. I am Mr Leschied's partner and have some involvement in this case, which is why I have some familiarity with the facts.

I just wanted to address the issue of the delivery of the no-fault benefits. As Mr Leschied pointed out, in both this case and in the previous case the no-fault benefits were cut off.

Your previous speakers talked about how insurance companies would compete to deliver those benefits. They compete to deliver those benefits now, and it does not work. The fact of the matter is that in some fashion, somehow, whether it is done by alternative dispute resolution or through the courts, those issues are going to have to be litigated.

Unfortunately, when someone is receiving \$180 per week and then is cut off, until that dispute reaches the courts, whether it be in three months in some alternative dispute resolution or some other basis—the fact of the matter is, at least today, to get to the point where those benefits are

reinstated, one has to get some type of judgment. So somebody has to retain counsel, presumably, or make his own pitch or go to legal aid or somehow get before the court, or, as I say, the alternative dispute resolution.

There has been some concern expressed about the length of time that this is going to take to get to the courts. Remember that Windsor is one of the pilot projects for the new court reform, so cases are going to get on quickly. Quite frankly, I think it is unfair to use these cases and suggest that because they took six years, somehow people are being mistreated in that fashion. I think any litigant is mistreated because of the length of time it takes to get to trial, but that is going to be speeded up in this county, at least, and in the other pilot projects.

The point we are making is that to simply say, "Well, the insurance companies will take care of these people," is quite frankly incorrect, based on experience for now. Insurance companies do not welcome you with open arms and say, "We'll take care of you," we have to fight those issues.

The Chair: Mr Ferraro and Mr Runciman. I have not forgotten you, Mr Runciman.

Mr Ferraro: Just to clarify on that point in particular, we certainly are sensitive to that. We realize that insurance companies have not been lily white, to say the least. In that regard, I say to you that the new system, under the office of the insurance commission, which we believe has substantive more clout, demands that income replacements be given within 10 days.

If there is a dispute, the insured has the option of going to mediation under the insurance commission, and that result has to be forthcoming within 30 days. If it is still hypothetical or challenged, then the insured has the option of going either to court or to an arbitrator, one or the other, and that result should be within 60 days.

Finally, I will just say that we have in there a fairly significant penalty if indeed insurance companies abuse the insured above and beyond these—

Mr Morga: I welcome that, but would you expect Mr Arsenaault to present his own case before that insurance commission? Mr Arsenaault is not a lawyer. He is still going to have to come to me or Mr Leschied, and where is he going to get the money to pay us at \$180 a week? That is his outside in.

1440

Interjection.

Mr Morga: Well, based on party-party costs to date; you know, party-party costs are awarded

at rates which do not cover our overhead today, and we can get into that debate. That is a whole other issue, we can talk about that for hours, but the fact of the matter is that those costs will not pay for and cannot pay for the litigation.

We are talking about court reform where small claims court is going to be increased to \$5,000 because people cannot afford to litigate over \$5,000. How can you litigate over \$180 a week for six months?

Mr Runciman: We had an insurance executive here earlier, talking about how do you compensate someone for pain and suffering, how do you put a dollar amount on that, and I inferred, as did the other members of the opposition anyway, that he was suggesting he was very much in agreement with the government's decision to eliminate compensation for pain and suffering.

I guess I would like to hear a bit about David's experience. I see by the submission here, David, that you are going into a pain clinic in London. I would like you to tell the committee about your experience in respect to the kind of pain and suffering you have been going through since your accident, the kind of pain that you have to live with on an ongoing basis.

Mr Arsenaault: I used to be very active in sports, all kinds of sports, and I cannot do any of them any more. I cannot lift over 10 pounds, I cannot bend, I cannot sit for a length of time. Everything is a chore. It is a chore to do housework, to go to the store to buy groceries, to carry them into the house. Everything is a chore now to do.

Mr Runciman: Essentially, this is what Mrs Masse was saying as well. She mentioned the fact of her social life. She was someone who liked to dance, someone who liked to do a number of things in a social way, and, simply, that element has gone from her life. She also mentioned the ability to give her children the opportunity for further education.

I guess David, as I said to Mrs Masse as well, these are excellent examples, in my view—if they are being heard, and I am not sure they are—of the kinds of penalties that this legislation is going to impose on innocent accident victims.

Obviously, it is tough for anyone, but especially someone who is in the position you are in and Mrs Masse is in, to say, "This is an adequate amount of money to compensate me for the pain and suffering that I have incurred as a result of someone else's misbehaviour." But at least there is some opportunity for compensation for what

you have had to go through, and the government is proposing to remove that completely.

The Chair: Mr Arsenault, thank you very much for your presentation.

Next we have Citizens Against Rising Rates, Mr de Pendleton. I have a copy of the presentation. We will make copies and circulate it to the committee members tomorrow when we get back to Toronto. The next 15 minutes, are yours. If you would just identify yourself for Hansard and then if you could leave us some time for questions and answers, we would appreciate that as well. Please proceed.

CITIZENS AGAINST RISING RATES

Mr de Pendleton: My name is Mervyn de Pendleton. I work in a factory and I survived a head-on collision in Windsor.

Ontario's no-fault insurance plan is being misrepresented to the public. We in Windsor call for drastic change, if not withdrawal, of the present Bill 68. Indeed, at least be honest and call it what it is, the insurance company protection plan.

Urban drivers are being advised of an eight per cent premium increase. This implies we are getting the same protection at not more than an eight per cent increase.

Fact: The three per cent premium tax for auto insurance is abolished. This is an additional three per cent cost increase paid for by the taxpayers. **Fact:** OHIP will handle the full cost of medical care related to accidents. These two measures are a gift of \$170 million annually to the insurance companies.

Fact: OHIP has been changed into an employment tax. Auto accidents of the future will contribute to unemployment and to less competitive Ontario industries.

Fact: The claim is that the eight per cent rate increase is much better than the 30 to 35 per cent increase proposed in 1988. This was based on the class risk plan that was scrapped before it ever went into effect.

Fact: The insurance companies are relieved of the cost of uninsured drivers as under the present plan. The tax-supported motor vehicle accident claims fund will pay the no-fault benefits to the injured victims of accidents involving uninsured drivers.

Fact: Eliminating pain and suffering awards will save the insurance industry \$480 million annually. This is a major cut in coverage to Ontario's drivers and nondriver victims.

Fact: Additional disability insurance will likely cost an additional \$300 to \$400 annually

for persons who cannot accept the risk of subsisting on \$450 per week. This coverage will provide the gravy for the brokers, since the commission structure will be greater than for basic auto insurance.

Fact: New York and New Jersey used the state regulatory powers to suppress rates at the inception of the no-fault plan to make their plans politically popular. To this day, New Jersey is struggling to pay catch-up for the drunken-orgy-type excesses of its no-fault introduction in 1973.

Fact: Ontario, in the terminology of the American insurance industry, is at present a no-fault jurisdiction with add-on tort. Part B of your insurance contract is no-fault medical insurance coverage.

Fact: Unionized workers will be looking to their negotiated wage protection plans to cushion the blow of loss of income. This plan demands you exhaust your employer-supplied sick benefits prior to receiving any no-fault benefits. Other workers will be less fortunate. Socially, we are creating a two-tier system. As insurance costs get pushed towards the province's employers, we are threatening our future job security.

Fact: As of 1 January 1990, preceding the no-fault implementation, we are stuck with a provincial income tax increase and a gasoline tax increase. This will reimburse Queen's Park for the extra moneys it will shell out to pay for what used to be covered by the insurance companies.

Fact: We are to be receiving less coverage. Often victims are low-income or retired or students or unemployed. For victims such as these, the pain and suffering or nonpecuniary losses are the major part of their settlements. Without a nonpecuniary award, many victims will be inclined not to seek redress for their pecuniary losses.

Fact: Self-employed and business people will receive nothing to compensate for what they will be required to pay others to carry on their activities while they are recovering. Some businesses simply will not survive.

Fact: The Ontario Automobile Insurance Board report and the Osborne report are remarkably similar. They support increased no-fault benefits and funding for rehabilitation in dealing with injuries while retaining the principle of fault for determining liability and damages. The Ontario government is rejecting the findings of these studies to go ahead with its own plans, sticking a threshold into the works.

Now add up the savings: Reduction in legal costs, \$200 million; reduction in pain and suffering awards, \$480 million; freedom from

medical costs, plus the three per cent tax abatement, \$170 million; an eight per cent premium increase now and more later. This is ranging up to a \$1-billion benefit to the insurance industry. We get hit with tax increases. Where is the \$1-billion cut in premiums to Ontario drivers?

We are not being given full facts about US no-fault. The public is being led to believe no-fault is a method to reduce rates. In the US, several states have adopted no-fault plans, but none in the last 10 years. American states were motivated this way for a very different reason: The United States does not have universal public medical coverage. Americans were devastated by medical costs as they waited for settlements under tort. Regulators decided no-fault would provide instant medical cost coverage and was the lesser evil.

In Ontario we have had OHIP for years. Canadians have had superior medical and auto insurance schemes. The main problem has been cost containment. Now we will pay more for an inferior system.

Lawsuits: Another claim is that no-fault will lessen litigation with possibly seven per cent of victims eligible for damages through a court award.

Many victims will be profoundly injured but the insurance companies will claim the injuries do not meet the threshold conditions. There will be many crusading lawyers out there fighting for their suffering clients. The insurance companies will feel no compulsion to settle, and therefore we can expect many long, costly and bitter disputes. It has taken Michigan many years to define its threshold language through tort decisions.

1450

This plan legitimizes injustice. Threshold no-fault discriminates unfairly against those with soft tissue injuries. The elimination of the right to sue is an abrogation of your legal rights and a denial of justice.

Under no-fault an irresponsible driver can create an accident, injuring a highly paid professional person, each receiving injuries. The guilty will receive exactly the same settlement as the innocent, and in some cases even more. Tell us loudly tort would not do a greater measure of justice in the same situation.

If you die, you get a death benefit. You will have to be buried in a paper bag to leave any of that for the family.

How about indexation of all the benefits? Along with losing the right to sue should not go

the loss of your home as you strangle slowly on a settlement cheque dwindling in value.

Juries are not allowed to decide the threshold interpretation, only a judge. Criminals can have a jury, but the innocently injured cannot.

Material possessions such as cars, buildings and other property loss will be fully compensated. Your personal injuries and wage loss will not. Is this how cheaply our lives are regarded in London and in Toronto?

Now some likely consequences: Worldwide there have been many experiments with no-fault auto insurance plans. The results in other places are interesting. Death rates have risen in Quebec and in New Zealand since no-fault has been introduced. No-fault jurisdictions have experienced steadily rising premiums. Even though the plan is no-fault, companies will assess fault and set higher rates unilaterally.

Insurance companies will determine if you meet the threshold conditions. For relief you will have to tangle with a large, industry-friendly bureaucracy in Toronto. The politicians in the background had their campaigns financed by the insurance companies in 1987. The \$50 per week provided for home care in this plan is grossly inadequate. Expert witnesses testify full-time home care will range between \$80,000 and \$100,000 annually.

The cost of regulation without market forces is enormous. Premier Peterson created the OAIB to prepare for regulated no-fault insurance. This has cost six per cent of the annual premiums in the province. In New York the latest figures show it takes 11 per cent of the amount of annual premiums to pay for this regulation. We had a real bargain when the superintendent of insurance watchdogged the industry.

Since the insurance companies have been saved every possible cost at our expense, you might as well finish the job. Make a law that gives all victims of motor vehicle accidents nothing. We can then do without insurance and pay nothing. In the end, if you had an accident, you would receive what this plan gives—nothing.

The Ontario government is morally bankrupt. It promises nothing, gives nothing, then it lies to us about how good it is to us and robs us openly. We in Windsor are tired of messengers who come here who lie and who steal and who give us nothing.

Drivers in Ontario will pay for this system with their money; taxpayers will pay for this system with their taxes; victims will pay for this system with their suffering. Materialization of higher

accident rates under no-fault systems means some of our lives will be lost by this plan.

I might add that Mike Ray has had a welcome change of heart, and it would be interesting to see him cross the floor and join the opposition.

Mr Runciman: You mentioned here that you work in a local industry?

Mr de Pendleton: Yes.

Mr Runciman: I think you missed your calling. You should be a commentator on radio. You have got a great commenting voice. You remind me of some of the US commentators—what is the fellow's name, Harvey something, something Harvey? It is quite similar.

In any event, I appreciated your comments and I thought they were dead on. I am especially interested in your views, and your organization's views, with respect to the figure you came up with with respect to the government's establishment—a significant intrusion into the private sector—when it created the automobile insurance board to regulate the setting of rates, the regulatory authority. Subsequent to that, the establishment of the Ontario Automobile Insurance Board, I have heard various figures. We have heard \$11 million or \$15 million of taxpayers' dollars, for all intents and purposes, goes down the toilet because virtually everything the board recommended to the government was rejected.

It is interesting that your group has come up with something like this. This represents about six per cent of what we have seen in terms of the increases in premiums in the past couple of years. I am not sure how you arrived at that, and you also have a reference to 11 per cent in New York state. I guess this has been another element of my concern with respect to this government's ability to generate growth within the bureaucracy at Queen's Park. We have seen various estimates now in the four and a half years they have been in office where there have been an additional 7,000 to 11,000 new bureaucrats retained at Queen's Park since the Liberals took office, and of course, the significant costs that are incurred with the retention of all those new bodies. They are great at creating new bureaucracies, and certainly this initiative is going to see that kind of growth again.

We have tried to get figures from the deputy minister with respect to what kind of costs are going to be incurred. They really do not know. Up until a few weeks ago, with this possibly going into effect very early in 1990, the deputy minister was still unable to provide us with the figures of costs that were going to be incurred,

the numbers of employees, etc. That, in itself, is pretty frightening.

Of course, there is a large grey area here in terms of the arbitration process, the dispute resolution process. The government is crossing its fingers with respect to the kind of workload this is going to result in as well and the costs that go along with that. We have seen the growth since this government came in with respect to rent review, where we are now looking at a \$40-million tax bill to try to deal with rent review and a backlog of up to two years to deal with rent review problems.

So I want to say that I share your concerns. I think that you have outlined your case very well indeed. Keep up the fight.

The Chair: Thank you for your presentation. Bill Boissonneault, is he in the audience? No. Grace Dent? Is she here?

Mr Monforton: My name is Greg Monforton and I am Mrs Dent's lawyer. I am scheduled to make my own presentation a little later this afternoon. Mrs Dent applied separately and of her own accord to make a presentation. However, she views the process with some trepidation, and she has asked me if I would mind combining my presentation with hers. I certainly have no problem in doing that, with your permission.

In addition, I would ask then that my time be given up, if you see fit to Janet McLeod, who is in the audience this afternoon. Janet McLeod works at the New Medico Head Injury System in the United States, a company which operates a number of head injury rehabilitation programs throughout the United States. She is also a member of the board of directors of the Windsor-Essex County Head Injury Association and a number of other related associations which deal with the rehabilitation of head injury victims. She has prepared a short brief and would welcome the opportunity to present her insights on this plan, particularly in so far as its implications apply to head injury victims.

The Chair: Please proceed. We will combine yours and Mrs Dent's for 15 minutes and then allow the other lady 15 minutes as well.

GRACE DENT

GREG MONFORTON

Mr Monforton: Thank you very much. As I said before, my name is Greg Monforton. I am a lawyer and I have spent the last 10 years representing innocent victims of other people's carelessness. There has been a lot said previously

about the interests of lawyers in making presentations to this board. As was stated previously today, I make no apology for it. My job is to ensure that the people who hire me are made whole again to the extent that the law can, and in my respectful submission, this proposed plan severely restricts the system's ability to do that.

Recent developments in the Soviet Union and eastern Europe have profited some journalists in the stories, but that is the 1990s, the decade of democracy. But within the borders of the province of Ontario at least, the 1990s might better be described as the decade of the insurance industry. Another way to put it is as it was stated by author P. J. O'Rourke in his work *Holidays in Hell*, and I quote, "One half of the world's suffering is caused by earnest messages contained in grand theories bearing no relation to reality, Marxism and no-fault auto insurance, to name two." I sympathize with that viewpoint.

1500

The Ontario government, in the material that it has distributed to the public, has said that this new plan finds the right balance; that is, it achieves the proper balance between affordable insurance rates and appropriate benefit levels. Let's consider the word "balance" for a minute. What do they really mean by that? The new Webster's Encyclopedia Dictionary defines balance as, among other things "to keep in equilibrium"; in other words, to keep equal. But does this proposed scheme keep things roughly equal, does it ask innocent victims to give up more or less than the insurance industry, or is it an uneven balance?

Let's look at what innocent accident victims get. They receive an increase in their income replacement benefits from \$140 a week up to \$450 dollars a week, and of course that is a good thing. I and, I am sure, most of my colleagues applaud that aspect of the plan. I am not here to tell you that the whole plan is bad and it does not have certain virtues. It has many virtues, but it also has many serious faults. We are looking at an increase up to \$450 a week. Again, that is good, but as I am sure all of you know, \$450 a week barely approaches the poverty level in Metropolitan Toronto for a family of three, and I think that at best it probably keeps up with inflation in light of the \$140 which has been in effect since 1978.

There is also the increase from \$25,000 to \$500,000 in medical and rehabilitation benefits; again largely illusory because the vast majority of these expenses are covered by OHIP in any event. Another word about rehabilitation bene-

fits and their delivery: There has been a lot said about how this new system is going to encourage compliance by the insurance industry with its obligations. In my experience, insurance companies do not bend over backwards to deliver these benefits as quickly as they can. I have been involved in many, many cases, and I can think of one in particular, acting for a gentleman, a self-employed carpenter, who was injured in an auto accident in the United States. The individual who caused the accident was uninsured. He was forced, therefore, to look to his own insurance company pursuant to the uninsured provisions of his own policy. It took a year for the company to figure out that it owed him in no-fault benefits on the Michigan scale. It was patently obvious to me, but it took that company a year to figure out that they owed him considerably more than \$140 a week. Even when they came to that conclusion finally, they were consistently late every month. It became a ritual. Every month his cheque would not come in. He had no other source of income. I would get on the phone, fire off registered letters, make threatening phone calls, and this went on and on for better than three years.

Rehabilitation: We wanted to rehabilitate, we wanted him to get involved in a program. Some lawyers would not do that. Some would say: "I'm going to have to pick who these people see, I'm going to have to be satisfied that the program is sound," etc. I did not. I said to the other side—and again, we are not dealing with a fly-by-night insurance company; we are dealing with a major insurance company in this country—"You pick the company that's going to do the rehab. You pick out the program. Let's get going." I was writing and fighting with them for the better part of a year, and they still never did. They would not participate in a rehabilitation program. They just would not do it.

So I have some very real concerns, based on my own experience, as to the willingness of insurance companies to all of a sudden have a change of heart and be willing to dive into this head first and gleefully help innocent victims become rehabilitated. In so far as the government's ability to ensure compliance is concerned, well, you are looking at over 150 companies, and I am sorry, I just have some real concerns as to the ability of the government to do that effectively.

We have looked at what innocent victims get that they did not have before: \$450 a week instead of \$140, arguably \$500,000 instead of \$25,000. But what have they given up? They have given up the right to recover their full

economic loss unless their injury goes beyond the threshold. In addition, even there, looking at that \$500,000 in long-term care benefits, as I understand, it is restricted to \$50 a day, and it will be further reduced if comparable care can be obtained in a group home environment. That goes against the whole tenor of recent court decisions which have said people are entitled to be treated, if at all possible, in the context of their own home. One does not have to be an expert in rehabilitation to appreciate that life in one's own home is a heck of a lot more pleasant prospect than being institutionalized for the remainder of one's days.

So you have got 95 per cent, and possibly more, of innocent accident victims being denied their full economic loss. In addition, they have been denied the right to sue for damages for pain and suffering. Ladies and gentlemen, the price you are asking citizens of this province to pay is simply too high. You are asking too much. Mr Justice Coulter Osborne in his report, which many feel is probably the most thorough and comprehensive analysis of the issue, concluded that benefits could be enhanced while retaining the right to sue and maintaining affordable premiums. Notwithstanding his conclusions, this government has seen fit to ignore them and proceed in the direction of a threshold system. Others have said it, and you do not need to hear it from me again. It is the highest in North America. I really question whether or not it is fair for this government to ask thousands of people to give up the right for any compensation whatsoever, even \$1, unless they pass the threshold.

Now what does the insurance industry give up? As I see it, they do not give up anything. They give up having to pay a three per cent sales tax on auto insurance premiums, which is estimated to total somewhere around \$95 million. They no longer have to pay OHIP \$45 million. There was some discussion this morning between Mr Nixon and an earlier presenter as to whether that was a gift or a subsidy. It is a matter of semantics. If somebody told me tomorrow that I did not have to pay any income tax any more, I would consider it a gift. I do not know if that is the proper terminology, but I would certainly consider it to be a gift. The simple fact of the matter is that the companies are not going to be paying this. They did in the past.

If you accept the premise that it is truly better to give than it is to receive, then the citizens of this province are the winners because they are doing all the giving and the insurance industry is doing all the receiving.

A few more words about the threshold: As Liberal member of provincial parliament, Ron Kanter, said, "The threshold is the keystone to the Ontario motorist protection plan." As I said before, pure and simple, it is far, far too high, far, far too restrictive and far, far too cruel. To demand that an injury be both serious and permanent and of a continuing nature is to disentitle literally thousands of innocent accident victims whose lives and financial futures have been completely and utterly ruined, completely and utterly and turned upside down. They get nothing for the pain and suffering they have been forced to endure. They have jumped through society's hoops, they have done things right, they have not drunk when they have driven, they have learned how to drive, they have exercised great care when driving, but they have been placed in a situation which they did not ask to be put in and they get nothing for it. It is not fair, it is simply not fair.

Now there are those who say, of course, that this had to be done because premiums would have increased even higher than the eight to 50 per cent that they are now, apparently, anticipated to rise in the first year. The American experience, I would suggest to you, does not bear that out. My understanding is that between 1971 and 1976 approximately 16 American states went no-fault. Two have since repealed their no-fault laws. I also understand that not a single American state has gone no-fault since 1976. Why is that? If the system is so good, and obviously every state has its variations of it and different approaches to it, but if the concept in the abstract is so good, then why are not some states implementing it? If it was that much of a success, if it kept rates down that much, if it ensured timely and proper delivery of compensation benefits to injured persons, why have no states adopted it?

You all know those that are opposed to the present plan. I need not go through them again, but very quickly, just to mention a few: Ralph Nader, the Canadian Mental Health Association, the Metropolitan Toronto Police Association, the Canadian Paraplegic Association, a number of retired justices of the Supreme Court and those associated with the industry.

Mr Runciman: Practically everybody but the insurance industry.

Mr Monforton: That is right, or those associated with the industry.

Again, we are not talking here about groups that want to change a semicolon here or replace a comma here or there; we are talking about people

who are fundamentally opposed to the very keystone of this plan, the threshold and the limiting of economic loss to \$450 a week unless that threshold has been passed.

That, in essence, is my submission. It is an unfair plan. It amounts to using a sledgehammer to kill a fly. Mr Nixon talked before about some lawyer saying the system is pretty good and should only be tinkered with. Well, I disagree with that. I think a number of those involved in the administration of the system acknowledge that it has serious flaws, serious faults. There is no question the \$140 a week now provides virtually no assistance to someone, particularly if he or she has a wife or husband or family to support. So I am not calling for modest tinkering; I am talking about substantial reforms of the system. But do not go too far.

With me to my right is a lady by the name of Grace Dent, whom I have previously mentioned as a client of mine. She asked, though, on her own, to appear before the committee. She was involved in a motor vehicle accident a few years back, suffering soft-tissue injuries as a result of that accident. What she would like to do to today is give you the benefit of her thoughts on how this accident affected her and her life.

1510

Mrs Dent: I was in an accident almost four years ago when another driver pulled into my lane without looking. Because of this, I suffered a soft-tissue injury, plus two compressed discs pinching some nerves. I have also developed fibrositis, which we heard about earlier. I suffer severe pain when I use my right arm and shoulder and I only have 50 per cent strength in my right hand. I have problems hearing things. I cannot lift things. I have been through four courses of physiotherapy, plus four years of 282s.

I may or may not have to have surgery. They say it may or may not do any good if I do have the surgery. My doctor said the only way that he would allow me to have the surgery is if I go completely paralysed. I can no longer knit or garden, do my heavy housework or help with my church dinners, which are all things I used to enjoy doing.

My husband and my son, for the last four years, have done most of our heavy housework. My husband has scoliosis of the back which causes him great harm, so between the two of us our house is not as clean as what I would like it to be. I cannot go to shows, I cannot go to church, I cannot go for car rides without suffering pain. I cannot sit for any length of time without suffering pain. My doctor says he feels I am not able to be

gainfully employed at this time of my life when I have raised my kids and I could have gone out and done something else with my life.

I feel that the new insurance plan would take away my basic rights to sue for compensation for my pain and suffering, which I have had for over four years. In my doctor's words, I could go on like this for months or years more.

Mr Monforton: Just to expand on that a bit, her family doctor has indeed prognosticated that her injuries will continue for many months or years to come but he has not said that they will likely be permanent. So you have a person here who has not had a sore neck for three months or six months or one year, you have a person who for literally the past four years has suffered a great deal of pain, a great deal of anguish, whose family life has been disrupted, whose work plans were disrupted, a person who, under this new system, would likely get nothing for pain and suffering. It is simply not fair.

The Chair: Thank you for your presentation. You had mentioned someone from Michigan in terms of making a presentation?

Mr Monforton: Not from Michigan. She wears many hats. She is employed by New Medico Head Injury System, which operates a number of rehabilitation systems throughout the United States. I was going to propose that she make her submission in the time that was initially allocated to myself.

The Chair: If she would like to come forward and identify herself for the benefit of Hansard, she has 15 minutes.

JANET MCLEOD

Ms McLeod: I am Janet McLeod. I have copies of my brief. I have 12 of them if I might circulate them.

As Mr Monforton indicated, I am a Canadian citizen and lived here in Windsor. I work for New Medico Head Injury System, which is an American company. I am also on the board of directors of the Cheshire Homes Foundation, which was mentioned in Toronto when the Cheshire Homes presented a brief. I am also the former director of Ashby House in Toronto, which was a transitional home for head-injured people, and I am on the board of directors of the Head Injury Association of Windsor-Essex.

I am extremely concerned about the proposed no-fault legislation and I wish to address two issues which I feel are particularly alarming: (1) the exclusion of compensation for pain and suffering and (2) the likely exclusion, according

to the threshold as currently defined, of many survivors of a severe head injury.

As I have mentioned, I have worked with survivors of traumatic head injuries since early 1983, when I was at Ashby House, and now as Canadian representative for New Medico. New Medico has some 35 programs across the United States.

During these years, I have been permitted to become involved in the lives of some 400 families and I know the desperation that a head injury can cause a family. As well, I am very much aware of the lack of services here in Canada for these survivors.

My own whiplash injury in a car accident in 1980 has given me particular understanding and sympathy with other accident victims, especially when the injury is not clearly visible, not insightfully diagnosed and not easily treated.

When I was injured by a drunk driver, I was not in constant pain after the first few weeks. My accident seems pretty minor compared to some of the others I have heard today. I kept on at my teaching job, feeling exhausted by noon each day, yet unwilling to let my students down when the prognosis from my doctor indicated that only another three months would transpire before I would be better. My supervisor could not appreciate my lack of energy, because I appeared okay after the collar was off and I was on Valium. I received a poor performance appraisal, for the first time in my life, a year and a half after the accident. My doctor then told me that it was going to be another year before I fully recovered.

This news was devastating, but thanks to compensation for pain and suffering, I was able to take a year productively in a warm climate where my neck hurt much less and recover. No physiotherapy, acupuncture or chiropractic treatment had been of any use, and if I had had to spend that year lying on my sofa, living on unemployment insurance, I know I would have developed depression and might well have committed suicide. My injury was not permanent, lasting only three years, but as OHIP covered all the ineffective treatment, the greatest component of the accident was my pain and suffering.

My experience was quite similar to the stories of many head-injured friends of mine.

On the CTV Shirley show which was aired last Friday 2 February—unfortunately, at one in the afternoon, when most people cannot see it—Dr William Franks, who is the director of rehabilitation at West Park Hospital in Toronto and is also the former admissions chairman of Ashby

House, defined a severe head injury as one with an hour or more loss of consciousness and post-traumatic amnesia—that is loss of continuous memory—of at least one week.

While I hope many of the ultra-severe head injuries, where there is other physical injury and a coma of weeks or months, would be able to receive first-class rehabilitation as quickly as possible, I am concerned about the mild, moderate or less severe injuries where there may be no apparent physical injury at all.

I suspect that with current diagnostic techniques of electroencephalograms, computerized axial tomography and magnetic resonance imaging, many of our injured will not pass the threshold and will not qualify for desperately needed benefits for rehabilitation and long-term care. This group is often called the walking wounded. There have been several television programs about these people. Some of the families of such people are active members of the local head injury association here in Windsor and could tell you what really happens to them, and it is pretty dismal. These people are in and out of psychiatric hospitals, jails, community programs. They succeed at nothing. The fortunate ones manage to get treatment, most frequently in the United States, but then they have nowhere to come back to in Canada.

Many of these less severe head injuries can be diagnosed only through neuropsychological testing and, by a physician sophisticated in this area, such as Dr Franks, through a commonality of symptoms, such as confusion, depression and paranoia. These symptoms, alas, are psychological, not physical, but they keep a great number of head-injured as dependent rather than participating members of our communities, and this is to the detriment of us all.

One of my head-injured friends from Toronto, who used to be a real estate agent, describes her cognitive dysfunction as, "I say something and it wasn't what I intended to say at all." You can imagine how well she can do in real estate. She cannot do it any more.

While New Medico provides excellent service for these people, these costs appear high, some \$450-\$700 per day. While the proposed legislation would cover that cost as rehabilitation, it would not be covered if the treatment were considered long-term care and the monthly maximum only \$1,500. I am certain that battles would occur between the insurance company and the family of the patient over this distinction and it would deprive people of care at a time when it is badly needed, forcing them into chronic care

hospitals with no ongoing treatment and certain deterioration, and this is exactly what is happening nowadays.

1520

Head injury statistics in the United States indicate the incidence of head injury is 16 times greater than a spinal cord injury. The Ontario Head Injury Association estimates that between 12,000 and 16,000 new head injuries in Ontario occur each year, mostly from auto accidents.

I urge the committee to recommend in the strongest terms the inclusion of compensation for pain and suffering, as Mr Monforton has also indicated, as well as finding a way to include benefits to head-injured who may not have a physical injury.

Mr J. B. Nixon: Thank you for appearing. I understand you work for New Medico.

Ms McLeod: That is right.

Mr J. B. Nixon: Its clinics, I take it, are all stationed in the United States? Are there any in Canada?

Ms McLeod: There are no programs in Canada at this point. The district health council for the Ottawa Valley requested and received a submission for a proposal for what they would call a post-acute program in Ottawa, but it has not come into existence yet.

Mr J. B. Nixon: I take it that it would be operating as a community health care facility under Bill 147?

Ms McLeod: They do not know the wording of it, but it would be affiliated with a hospital, so it probably would not.

Mr J. B. Nixon: You state on page 1, at the bottom,

"With current diagnostic techniques of electroencephalograms, computerized axial tomography scans and magnetic resonance imaging"—etc, I guess—"many of our injured will not pass the threshold and will not qualify for desperately needed benefits for rehabilitation and long-term care."

Those are two separate statements. Getting to the threshold is one issue and qualifying for rehab and long-term care benefits is another issue. You are suggesting that a head-injured person may not qualify for either. I can understand this debate about the threshold, although it is my view, and I have heard many say that the head-injured would pass through the threshold, but I cannot understand why they would not qualify for rehabilitation and long-term care benefits.

Ms McLeod: My point was mainly to indicate that some head injuries do not show up physically

and therefore would not cross this threshold, and my understanding is that if you do not cross the threshold, you do not get long-term benefits.

Mr J. B. Nixon: No, you do. Everyone, regardless of whether or not he was at fault in an accident, whether or not he crosses the threshold, whether the injury is minor or major, is entitled to access to those long-term care benefits and the medical rehabilitation benefits.

Interjection.

Mr J. B. Nixon: I will get to that point. But just so you know, you do not need to get past the threshold to qualify for access.

Ms McLeod: But would they have enough for the solid rehabilitation that they need?

Mr J. B. Nixon: That is another question that I wanted to get to. There is no monthly cap on the medical and rehab benefits. There is a monthly cap right now on the long-term care benefits, which is, as you say, the \$1,500. We have asked other people who have come before us, "What would you think a reasonable figure is?" The highest example we had was a case, MacDonald and something—

Ms McLeod: Travelers insurance.

Mr J. B. Nixon: —Travelers insurance, where they were itemized, and they were very high indeed, I think we were looking at \$4,500 a month, but I think I am correct in saying groups like the Advocacy Centre for the Handicapped and Ontario March of Dimes, which came before us, suggested \$3,000 would be a reasonable figure. It might not compensate all, but \$3,000 a month, or even the \$4,500 a month, which was MacDonald's and Travelers, is much lower than New Medico, which is charging—at \$450, that looks like \$12,000 to \$13,000 a month. I take it New Medico is a profit-making institution.

Ms McLeod: It is.

Mr J. B. Nixon: This is the first time that we have heard anything in the order of \$12,000 to \$20,000 a month.

Ms McLeod: My concern with that is that all of the families that I have ever toured in any of the New Medico programs are very impressed when they see all the rehabilitation that is given. Certainly it is comparable to what Chedoke-McMaster Hospitals cost, even though the cost is hidden from us because OHIP pays for it. So the costs for the rehabilitation are out of line.

My concern is that some of what they would call post-acute programs that may be behavioural in nature, these walking wounded, some of whom are quite well known in Windsor, may

require more than three months' treatment and may look to treatment lasting maybe nine months to a year, particularly if they do not get it for seven years. They only get worse. It might be considered by an insurance company as long-term care, and therefore they would be cut off and sent back to Canada or taken out of whatever treatment and put back in a psychiatric hospital where they do not get appropriate treatment.

Mr J. B. Nixon: No matter what sort of insurance system we have, I expect that type of dispute is going to occur. I am just trying to get a handle on the costs here. Is the \$450, the \$700, all for long-term care? That must include rehabilitation?

Ms McLeod: That is rehabilitation; it is not long-term care.

Mr J. B. Nixon: And it includes some medical and stuff like that.

Ms McLeod: As was mentioned this morning, it includes the full range of therapy, the team approach, continuum of care.

Mr J. B. Nixon: Okay, so the \$1,500 cap does not apply, and if it were a legitimate cost, then in the best of all possible worlds it would be paid whether or not the person exceeded the threshold. So they would be taken care of.

Ms McLeod: We would hope that will happen.

Mr D. S. Cooke: Just very briefly on this point, Janet, I think your presentation would have been better if it had emphasized that, instead of the need to provide an insurance system with benefits that allow us to continue to access for-profit American facilities, the better solution would be that these facilities were available here in Ontario. I know from talking to you before that that is your preference, but I would hate to see a system where we build in benefits simply to be able to continue to access American for-profit hospitals when these facilities and these types of programs are needed desperately here in Ontario and should be part of a program.

Otherwise, we continue to have difficulty. If a person's head is injured from falling off the top of the roof of a house or something not involved in a car accident, he still will not be able to access the American programs and people in a car accident would. The real solution is to have the programs here in Ontario.

Ms McLeod: I would agree with you, but having worked in this field since 1983 and for a US company since 1986 to make the point that the services do not exist in Canada but are not some mythical, magical thing, we would only need to look across the ditch, as they say here in Windsor, to see that there are some very good programs. We could easily bring in the techniques and the technology and the expertise.

We indeed should have it here, but I am not going to hold my breath for that, because there are too many families on my answering machine right now that are going to tell me that they do not have service, that they need it, they have been waiting since 1987 for the behavioural program at Chedoke-McMaster to be open and it has not happened. I have got to agree with you. I wish we did.

Mr J. B. Nixon: I have a very quick comment, which Mr Cooke may find interesting too. Recently, a guy named Bernie Gluckstein, a lawyer in Toronto, entered into a partnership with an insurance broker to set up a health clinic, which will be multidisciplinary, basically to access the \$500,000 rehabilitation and use it to help accident victims. They see this legislation as an opportunity to establish in Toronto, or in Ontario—they have plans to do it throughout Ontario—a series of clinics to provide multidisciplinary rehabilitation.

The Chair: Thank you for your presentation.

Mr D. S. Cooke: It has been such a pleasure to have you all in Windsor.

The Chair: Is Bill Boissonneault in the audience? If not, I will adjourn the committee hearings until tomorrow morning at 8:30 in Toronto in room 151.

The committee adjourned at 1529.

CONTENTS

Monday 5 February 1990

Insurance Statute Law Amendment Act, 1989	G-687
Kent Law Association	G-687
Windsor and Essex County Insurance Brokers Association	G-693
Dr Walter Yaworsky	G-697
Middlesex Law Association	G-701
Rodney M. Godard, Terry Welch	G-708
Essex County Fibrositis Society	G-714
Automobile Club of Michigan	G-718
Afternoon sitting	G-723
Essex Law Association	G-723
Ontario Mutual Insurance Association	G-725
Sheila Masse	G-732
David Arsenault	G-735
Citizens Against Rising Rates	G-738
Grace Dent, Greg Monforton	G-740
Janet McLeod	G-743
Adjournment	G-746

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Morga, Gino, Legal Counsel to David Arsenault; with Wilson, Walker, Hochberg, Slopen

From Citizens Against Rising Rates:

de Pendleton, Mervyn

Individual Presentations:

Dent, Grace

Monforton, Greg, Legal Counsel; with Monforton, Robitaille, Ducharme and Skipper

McLeod, Janet

Monforton, Greg, Legal Counsel; with Monforton, Robitaille, Ducharme and Skipper



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Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on General Government

Insurance Statute Law Amendment Act, 1989



Second Session, 34th Parliament

Tuesday 6 February 1990

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

CONTENTS

Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Tuesday 6 February 1990

The committee met at 0836 in room 151.

INSURANCE STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

The Chair: I am going to recognize a quorum. We had indicated that we were going to start at 8:30 this morning with a briefing from the Ministry of Financial Institutions. Mr Ferraro, I believe, has an opening statement and I will turn it over to him. I am going to let us go till about 9:55 in case people have to move the small volume of material as we prepare for the witnesses at 10 o'clock. Mr Ferraro, we are in your hands.

MINISTRY OF FINANCIAL INSTITUTIONS

Mr Ferraro: I just have a short statement and then we can proceed. As you know, this information session is being held today in order to provide you with a number of studies, documents, reviews and reports that deal with automobile insurance in Ontario. With me are Robert Simpson, Deputy Minister of Financial Institutions, whom you know, and Colleen Parrish, the director of policy at the ministry. They are here to help guide us through the material, to give us an overview and better understanding of the many reports that are being released today.

Members of the committee have been given folders that contain copies of all, and I stress all the documents reviewed by the government in the development of Bill 68, with the exception of the Slater, Osborne and Ontario Automobile Insurance Board reports which have already been released. As you can see, this information is voluminous. It is also highly complex, technical and detailed. In total, there are 39 documents being released today including the 23 studies that some committee members have requested. This information also includes a number of working drafts. Some of these reports and studies were commissioned by the government and some were commissioned by others such as Fair Action in Insurance Reform and shared with government. What we have here is a collection of material that

was used by government in the design and development of its no-fault auto insurance plan.

As we have indicated to the committee, materials prepared by Mr Justice Osborne and the Ontario Automobile Insurance Board in its reference hearings provided us with a wealth of invaluable information and background. The sheer volume of documentation, again, 39 separate reports, indicates the depth of research and the range of options that were considered in designing the Ontario motorist protection plan.

We thought it was important at this juncture to release all the documentation. The issue of public disclosure was diverting attention, quite frankly, from the more important concern of insurance reform and the public hearings process. We have also made this material available to all persons who requested it, as well as to the actuarial firms and organizations whose work is referenced in these studies.

The general public and the media can examine this entire package at the Consumer Information Centre, 555 Yonge Street, ground floor, or at the Ontario Automobile Insurance Board in North York, which is at 5 Park Home, North York, fourth floor.

Following my brief comments this morning, the deputy minister will explain how the material in your folder is organized and the process that was used in analysing the various documents the government received. Colleen Parrish will then provide a summary of these documents. What is important to remember is that the reports being released today were used by government as resource material only. Indeed, you will find a wide divergence of opinion with respect to cost estimates and other projections. Consequently, no single document was looked at in isolation and no single document formed the basis of the government's reform plan.

This is an important point to keep in mind while examining this package. In releasing all of this documentation, we were concerned that some reports might be given more prominence than others, that one or another viewpoint might be misconstrued as the government's official position. The message I want to convey to committee members and to the public today is that development of the new insurance product was a complex and indeed evolutionary process,

one in which a wide range of opinion was canvassed and many divergent viewpoints were considered.

It is within this context that these reports should be read. One actuarial study will project certain costs while another will provide a completely different set of estimates. This is not unusual in trying to cost insurance products since actuaries are basically attempting to predict future trends and economic variables.

In closing, I would urge committee members and the public to view these reports in the same manner as they were received by government; that is, as research that provided the ministry with guidelines as to the possible consequences of various policy options. This documentation by itself cannot determine the appropriate direction for automobile insurance in Ontario.

I will now like to turn this information session over to Mr Simpson, the deputy minister.

Mr Philip: May we ask questions on the presentation?

The Chair: Mr Ferraro, are you willing to accept any questions at this point in time on your statement?

Mr Ferraro: If you would like, sure.

The Chair: Briefly, Mr Philip.

Mr Philip: The first question I intended to ask you is, why are you here and why is the minister not here to present these documents we have been asking for so long?

Mr J. B. Nixon: Where are Kormos and Runciman?

Mr Philip: It is the minister's responsibility to be here and answer questions, not the parliamentary assistant's.

I wonder if you can tell the committee which of these documents were in the possession of the ministry prior to drafting the legislation?

Mr Ferraro: Do you want me to answer both questions?

Mr Philip: Yes.

Mr Ferraro: The first answer quite frankly is that I think the minister obviously will be available for any and all questions subsequent to the meeting. There was a determination that I should earn my parliamentary salary and that the emphasis of this particular meeting would be an explanation of the actuarial drafts. It is regrettable that I am perhaps not as capable as the minister to answer all the questions, but I am sure he will be available to supply you with any answers to questions you might want to present at a later date.

The answer to your second question is that I honestly do not know. Maybe Ms Parrish could answer that if you would like. She has much more—

Mr Philip: Could you answer the question then?

Ms Parrish: If it is agreeable to you. There is only one document that was commissioned and received by the ministry after the draft legislation was released in September. It is document 39, which I will be speaking to. Document 39 deals specifically with issues that have been raised by this committee in the course of its debate and needed some subsidiary work in order to ascertain exactly what would happen if certain policy changes were made in that regard.

Mr Philip: Do I understand you correctly to say then that out of 39 documents, 38 were in fact in the minister's possession before the legislation was drafted?

Ms Parrish: Yes.

Mr Philip: Mr Simpson is nodding his head yes.

Ms Parrish: Yes, that is correct, although obviously at various stages we tried drafting certain things, but certainly they were all received—you will see by the dates in the index that they were all received—before September, with the exception of one.

Mr Philip: Mr Ferraro, you said that this is a very complex issue and I will certainly agree with you. The documents you have tabled with the committee, at least in volume—I do not know about the content because I have not had a chance to read them—are certainly onerous to look at.

We have had some very skilful, professional, concerned people—consumer groups, social planning councils, lawyers, physiotherapists and other health professionals—come before this committee and they did so to comment and to help out this committee in its deliberations on this legislation. Can you tell us why you did not table the 38 documents so that these groups would have the advantage of reading them, reviewing them and commenting on them before they made their presentations?

Mr Ferraro: The answer essentially is two-fold. First, I should remind you, as I am sure you know already, that much of this documentation was prepared for the advice of cabinet and as such could not be released at an earlier date, as requested by many people, admittedly.

Also, because we had accumulated this voluminous package of information over a period of years and indeed came up with our conclusions

after studying this over a number of years, because a lot of it is technical in detail we felt it would be irresponsible quite frankly for the government to release this information without having a summary of each document so that average lay people, many of the presenters as you indicated, could have a layman's view, if you will, as opposed to an actuarial or economic view of some very difficult material in many cases. Those are the two reasons.

Mr Philip: Mr Ferraro, you have given me two reasons. One is that they are a cabinet document, but they are still cabinet documents. You could not release them before because they were cabinet documents; you can release them now even though they are cabinet documents.

Mr Ferraro: Yes.

Mr Philip: I find that a puzzling sort of rationale.

Mr Ferraro: That is right. That is not unusual at all.

Mr Philip: Your second reason is that you had to do a summary of all the documents. Surely a summary would have been done before you drafted legislation, would it not?

Mr Ferraro: No. Our staff is quite capable of analysing and, for purposes of the ministry and cabinet, making certain recommendations and showing many areas of concern based on actuarial data without doing a summary.

Mr Philip: You say that your staff is quite capable of analysing these documents without the need for a summary. Are you suggesting that the very capable witnesses who have appeared before us and who have commented on this legislation are incapable of doing the same kind of analysis that your staff is capable of doing?

Mr Ferraro: Not at all.

Mr Philip: Is it not a rather disparaging opinion of some of the excellent witnesses we have had to date?

Mr Ferraro: It was not an attempt, Mr Philip, in any way, shape or form to demean any of the delegations. Indeed, there are some very capable people who could analyse much of the documentation as well as our ministry staff. But the reality of the situation, and I am surprised that you are surprised, Mr Philip, is that until very recently cabinet was using this documentation and the ministry making recommendations to cabinet, and at that juncture it is confidential. That is the way it has been in the province of Ontario for as long as I can remember.

When cabinet is finished with the material—in fact I would go further and say that this is somewhat unique in that all the documentation is being released prior to the passage of the bill. If history tells you anything, it is that cabinets in prior governments were reluctant and even to this day have not released much of the information.

Finally, to deal with the point that you feel maybe I was insulting some people, it was not my attempt. I would say, however, that many of the delegations, and I say this with great respect, would have some difficulty in analysing the material. Subsequently we felt that a summary and proper explanation in layman's terms would be much more helpful to those people who are not quite as capable as some of the others.

Mr Philip: Would you like to name which groups, then, of all the groups that have appeared would be incapable of analysing your documents without your little crib notes and Coles notes as primers for each of them?

Mr Ferraro: No, I really would not. I cannot recall all the groups, but I think that is pretty well a subjective decision anyway. Perhaps when you go through some of the documentation, Mr Philip, you might have a tendency to agree with the fact that some of the material is difficult to comprehend by some people.

0850

Mr Philip: I might have concluded that if I had had it on time so that I could have based my questions to the excellent witnesses we have had on the material and on the research which the taxpayers have paid for. Your memory of the past is somewhat selective. As I recall, and I have been here some 15 years, any complicated legislation usually is accompanied by some white papers sent out for review, not just by one group such as the insurance companies which seem to have meetings with the Premier when no one else does, but by all groups, and public comment, and then with white papers that are clearly footnoted. Mr Simpson, who has been around here for a long time, will verify that I am sure.

Suddenly, towards the tailend of the hearings, we find we are being given a volume of material. All along, your members on this committee have indicated that if the witnesses had a clearer understanding of all the great knowledge you have accumulated through this taxpayer-paid-for research, they might have come to different conclusions. We are told this morning by you that 38 out of the 39 documents in fact were prepared before the legislation was introduced and now we are being tabled it at the end.

I say to you that your act this morning is not just offensive to this committee, but I think it should be offensive to members of the public who have appeared before this committee, some of whom we may wish to recall as a result of this action this morning in order for them to comment on the research and papers you have just tabled. No doubt a number of them will want to comment and probably will ask for an opportunity to reappear. I say to you that your actions are not only insulting to the groups and to the members of the committee, but I think it is an awful waste of the taxpayers' money to have this kind of duplication.

The Chair: Mr Kormos, very briefly.

Mr Kormos: Why?

The Chair: As I mentioned, we have about an hour left.

Mr Kormos: Fair enough. I had to check with Mr Philip before I dared suggest this: 38 out of 39 of these documents were prepared before the bill was drafted.

Mr Ferraro: That is correct.

Mr Kormos: Then why did you sit on this committee and tell us that the material was in the course of being prepared? You specifically said that—

Mr Ferraro: No, what I said—

Mr Kormos: —in response to some very specific questions about this very particular material.

Mr Ferraro: Could I respond? What I said, and I think reiterated today, was that the vast majority of this material, if not all of it, was prepared for the advice of cabinet. What I said, and I think you want to check Hansard, was that the government, indeed the cabinet was still looking at the material vis-à-vis a final tuneup for any and all amendments that we were going to propose and such things as the mandatory optional insurance benefits. That is what I said, Mr Kormos. Whether it is acceptable to the opposition or not, quite frankly, I think it is reality and I think quite frankly commendable that the government at this point is releasing all the information. My memory might be selective, Mr Philip, but there is probably much documentation that cabinets in the past have still got hidden or trashed some place.

Mr Philip: I imagine there are a lot of documents relating to Patti Starr that the government still has hidden as well in this government.

Mr Kormos: You can follow through with your Rhett Butler and it is obviously, "Quite

frankly, I don't give a damn." It is incredible, and I obviously endorse the position taken by Mr Philip, that you would sit on this documentation. It is incredible that the minister would tout his Ontario Automobile Insurance Board hearings as being an open process.

You undoubtedly recall our cries for intervenor support during the course of the OAIB hearings, the government's refusal to provide any intervenor support for groups that wished to participate as interveners in those hearings and the government's adamancy that those were open hearings and that all the documentation was available to all of those who wanted to participate in that process.

A process which condemns the legislation that you produce is open, but a process that you are going to rely upon to endorse or somehow prop up shabby, shoddy, dishonest legislation is kept secret. How can you justify the contrast in the two procedures? One procedure the government claims is open, the other you quite frankly insist was secret, and in your view intentionally secret, not by accident, and secret not just at the onset—quite frankly, if we look at dates here, I see they go back to January 1989. We are looking at over 12 months of secrecy. What gives here? What is so secret about this material that precludes or prohibits you from sharing it with persons who want to and have an obligation to participate in the legislative process?

Mr Ferraro: If I may, first, Mr Kormos suggested I do not give a damn. I say, with great respect, that in fact I do care quite a bit about this legislation.

Mr Kormos has implied that there is something dishonest about the fact that we have held it until now. Admittedly it would have been nice to get the material out at an earlier date but, I repeat, much of it was used for cabinet purposes, and indeed in the fine-tuning of any and all amendments that we are going to present.

At that juncture, we felt as well that prior to release it would be irresponsible if we did not have a synopsis for the general public to view. Let me conclude by saying, mindful that there is approximately a week or two weeks left in public hearings or in the hearing process, that there is still opportunity for some comment, albeit not as long as many would like. But in the final course of the day, the government is always responsible for its actions and that is a responsibility that we accept, quite frankly.

Mr Kormos: What is the synopsis that you are speaking of?

The Chair: Maybe this would be a good point in time to let the deputy minister and Ms Parrish continue the process. Mr Ferraro had an opening statement, copies of which I am sure he could provide to you if you would like a copy.

Mr Ferraro: There are summaries.

The Chair: The deputy minister was about to start taking us through the package as an overview and Ms Parrish was going into more detail.

Mr Kormos: Fair enough. I will stop. I was just concerned because if the government was waiting until a synopsis was prepared to release this, how could members of cabinet possibly have understood it without the same synopsis?

The Chair: The deputy minister.

Mr Simpson: Thank you. Good morning, members of the committee. In a very few minutes I am going to turn matters over to Ms Parrish, who will give a detailed rundown on the contents of the actuarial reports. What I would like to do, if I may, is just take a little bit of time explaining how the material is organized.

If you do not mind, let's use for a minute the folders that are in front of you because I want to point to the organization of the material in the accordion folders. I think it is quite useful to indicate how it is organized. There are 31 numbered tabs in the accordion folder. There are 39 documents, so documents 31 to 39, quite a thick group, are in the very last section of the folder.

What I want to point out is that in front of tab 1, right in front of the folder, are two documents: one, a glossary of actuarial terms, some of which Ms Parrish will no doubt be using in her presentation; and two, a document which is called the Index of Actuarial Reports. That index, which is in front of divider 1, organizes the reports in chronological order. It has a brief title of the report.

That same title that you see in the index is replicated on the front of every document in the package, so anywhere you look in the accordion folder you will find the same descriptor on the front of the document, whether it is in 17, 29, or whatever, as is on the title section of the index. Then the index indicates the author. In each case, it is an actuarial firm. There were in fact six different firms used in various aspects of the actuarial research.

0900

Beside each of the report numbers is a brief summary of the contents of the report. It is worth noting, I think, on the front of the index that the

original discussion at the committee and the original request by Jack Carr and associates related to 27 documents. Then there was discussion of 23 documents. There were four documents that are already in the public domain, public documents that people have seen and used, and these are not among the 39 that are listed here.

In terms of the actuarial reports themselves, those that the ministry commissioned from a variety of actuarial firms cost a total of \$245,000. There is one contract outstanding with a maximum price of \$15,000. It will probably come in less, which means a potential total of \$260,000 for the work that the ministry commissioned.

That is really all I want to say about the organization of the material. You may want to use the glossary as Ms Parrish speaks, and if you want to reference any of the documents that she talks about in her presentation, you have an index and a descriptor and you can find them in the accordion folder.

Ms Parrish: I will try to leave time for any questions that the committee may have, bearing in mind the chairman's request that we be finished by 9:55. I think Mr Carrozza has distributed to all of you a document that is entitled Presentation to the Standing Committee on General Government. This will be just a point-form guidance that I will use to go through these documents.

In looking at the documents, we thought it would be useful if we attempted to group the documents into six areas rather than deal with them chronologically, since that may not give a very good conceptual understanding of the process. So the first group of documents we have called initial survey documents.

Document 1 is a document that the ministry has in its possession but did not commission. It is done by the Wyatt Co. It is essentially an analysis of the choice system, which was subsequently reviewed in great detail by the Ontario Automobile Insurance Board. You will note that in the index and in the presentation, if a document was held by the ministry and released by us but not commissioned by the ministry, it has a little asterisk against it, since you will not know that.

The documents remaining on page 1, documents 2 to 6, document 7 and document 8, are all related to one another. Indeed, documents 2 to 6 are working documents that lead ultimately to document 7. While I would not want to suggest that you should not bother reading documents 2 to 6, document 7, in essence, summarizes the work that is contained in documents 2 to 6.

Essentially what document 7 does, as one of the more major pieces of research, is look at six potential insurance models and evaluate them in a number of ways. This work was done by Eckler Partners Ltd. The six insurance models that were reviewed at that time included a first-party choice system between tort and no-fault. In other words, that was a system in which consumers could choose to buy a tort-based policy that they would recover, to the degree to which they were not at fault, from their own insurer. That is often called first-party tort.

The other policy that consumers could have chosen under this model would be a no-fault policy, a pure no-fault policy with no tort element, in which they would recover from their own insurer entirely based on a schedule. The first-party choice system was ultimately studied in considerable detail by the Ontario Automobile Insurance Board.

The second model that was reviewed was what was called the O'Connell Joost model of choice. The reason it is called that is that the proponents of this model of choice were two American professors called O'Connell and Joost. They had a system of choice as well which was somewhat more complex and which they proposed in a number of academic articles, and this was also reviewed in this document.

A third model was considered, called the tort waiver model, which is essentially that consumers could give up their own right to sue in tort and receive a schedule of no-fault benefits and presumably lower premiums, but other people could still sue them.

The next model that was considered was the total elimination of any pain and suffering award except under a no-fault schedule, similar to what they have in Quebec, which is often inelegantly termed the meat chart. That is in essence a schedule of benefits that says, "If you lose your arm, it is \$100,000; if you lose your toe, it is \$5,000," and so on, but allows complete access to the courts for economic loss only.

The fifth model that was considered was a threshold no-fault system, looking at the American jurisdictions that have verbal thresholds, that is, thresholds that restrict the right to sue on the basis of some sort of test of seriousness.

The last system that was looked at was pure no-fault, similar to the Quebec model system, in which there is no access to the courts but recovery is entirely on a schedule of benefits.

Document 8 clarifies certain elements of the costings in relation to certain benefits. This was the initial survey done, where there was a fairly

broad focus on quite a wide range of potential products: some products that existed in the real world, such as threshold and pure no-fault, and other products that had been brought forward by various groups or had been proposed in academic journals. So there was a wide range of potential insurance products that was being reviewed at that time.

The next group of documents on page 2 of the presentation are documents related to the Fair Action in Insurance Reform proposal. I know that members of the committee have some familiarity with the FAIR proposal, but I will just reiterate that the FAIR proposals were given considerable study by the ministry. The FAIR proposal is a form of monetary threshold which does exist in a number of American jurisdictions but it had a more unique feature in also having a deductible for all tort awards, that is, if the person who was injured had injuries of less than a certain monetary value, he would have no right to sue because the courts would deduct that from the overall award.

But even people who are very seriously injured, say somebody who was a quadriplegic and received a \$1-million award, would have a deductible from that award of a certain amount. The FAIR proposals costed a fairly wide range of deductibles. They costed deductibles at \$5,000, \$7,500 and \$10,000 in this material. The documents on page 2 show that there were a number of costings of the FAIR deductible proposals, some done by the firm of Actrex Partners Ltd, a review done by Wyatt which was provided to the ministry, costing by the firm of Tillinghast Nelson and Warren Inc, which was undertaken by FAIR but at the request of the ministry, and a review of the Actrex costing by Eckler, which was a company that was commissioned by the ministry to review the work of Actrex in a sort of peer review. You will see that in some of the later documents, the methodology of peer review, or getting other actuaries to review the work, was the methodology that the ministry used on a number of occasions.

On page 3 we are moving into closer focus on the potential insurance products that might be considered. For example, we are no longer considering some of the insurance products that were reviewed in the initial reviews phase. Documents 9 and 13, 13 being the final document, review essentially a first-party choice system and a threshold system, and that work was done by Eckler, 9 being the earlier draft and 13 the final. There is really not very much difference between 9 and 13.

0910

Document 10 explores the issue of the removal of suit for economic loss below the threshold, which is a feature of the Ontario motorist protection plan which differs somewhat from threshold systems in other jurisdictions.

Document 11 is the first of our own internal peer reviews, in which we retained the firm of Sobeco, which is a Quebec-based company that does work across Canada, to look at the work that Eckler had done on choice and threshold. The partners from Sobeco are particularly well informed about the world of auto insurance, in that one of their senior partners, Jean Gauvin, is often called the father of pure no-fault in Quebec and was the author of a very seminal report called the Gauvin report on no-fault insurance in Quebec.

Documents 14 and 17 ultimately lead to document 24, which was again—I would not want to suggest you do not want to read everything—a particularly key document, and cost the product that was referred to at that time rather inelegantly as hybrid threshold. The reason it is called hybrid is essentially that the system was a combination of pure no-fault and a threshold system. While this system is not in all details the same as the Ontario motorist protection plan, it is similar, that is, there are a number of changes that were made in the OMPP, but this is similar in principle to the product that the committee has considered.

We also asked in document 37 for Eckler Partners Ltd to review the impact of this so-called hybrid threshold on commercial and other vehicles, although the focus of the ultimate peer review was more on the private passenger vehicles since, to be blunt, there are many more private passenger vehicles in Ontario than commercial vehicles. Private persons have less capacity to deal with cost increases than do commercial companies because, of course, they cannot write off in forms of taxes. However, notwithstanding, we are still very concerned to see the full range of impact because it is important to see what the impact would be on small business and companies that make their living, for example, in trucking and so on.

Document 22 essentially attempts to look at some of the components of the overall product change.

On page 4 we have the documents that I referred to earlier as the peer review documents. It was recognized initially, when we started doing the original work with Eckler Partners, although Sobeco was also involved at various stages, that it was wise to have other actuaries

give their input and their judgement because, as was indicated earlier by the parliamentary assistant, what actuaries are doing is essentially going through a process of professional judgement based on their training.

To some degree, they are going through a process of predicting the probability of certain future events and, since you really are dealing with the matter of professional judgement, it was felt that it was wise to get a range of professional judgements to have some degree of understanding of the kinds of issues that would be raised and the kinds of disagreements that various professional people might have about various documents.

The documents that appear on page 4 are essentially other actuarial firms that underwent a peer review of the work done by Eckler and had a number of meetings with one another to try and narrow the areas of disagreement so that the government would have a better sense of the likely results of certain things. The companies also brought forward various positions that they have from their own research and, when you look at these materials, you see that in some areas there was a degree of agreement or consensus within a certain range.

Mr Runciman: What is the number of this document?

Ms Parrish: It is on page 4.

Mr Runciman: Which section in the folder?

Ms Parrish: Under the tab, staff document 25 and following; essentially documents 25 to 31 consecutively and then jumping over to 34.

Tillinghast, Mercer and Sobeco were the main firms that did the peer review, with Eckler Partners having done the initial work. In some areas, as I said, you will see that the firms did come to some sort of professional consensus. In other areas there continues to be a very wide divergence of opinion as to what was the most likely thing to happen in a given scenario.

Later on in the presentation I am going to spend just a few moments talking about why those divergencies occurred and I will give some examples within the documents themselves that point out areas where there were different disputes. I will try to explain to you the kind of professional judgement that was being imposed so that you can decide for yourselves about the assumptions being made by the various firms.

On page 5, we have three documents—two of which are working papers leading to document 21—that deal essentially with rate impact. Since this study was fairly narrow, I thought it would be useful to explain what it was designed to do.

Essentially it was designed to take one variable, which was product change, and impose it upon the Ontario Automobile Insurance Board classification and rating system to find out what would be the rate impact if all you did to the system was make one product change.

The studies that you have seen up to this time all deal with averages. In other words, they say the average premium in Ontario will be \$730, but that does not really tell you what would be the impact on the senior citizen living in Scarborough or on a young man living in Welland or a commuting driver living in Timmins. So it was felt that it was useful to find a little bit about the impact of product change but also important to see what the impact would be in a more real rating world.

It is also desirable to see whether or not just changing the product would deal with some of the problems that many people had identified with the new classification system put forward by the OAIB. For example, would a product change assist the younger female driver who might have experienced very dramatic rate increases? Would it have assisted the senior driver who had recently learned to drive? For example, in terms of rates, would it assist the situation of an older woman who just recently learned to drive? Those documents deal with that relatively narrow area but give some very useful information about the impact of product change in the absence of other kinds of changes.

Lastly, I put together a group of documents. I have called those essentially the tort reform statutory limits in the Ontario motorist protection plan. This includes document 39, which I would like to speak about very briefly as it is a point that Mr Philip asked me about earlier.

Documents 33 and 36 essentially cost various aspects of tort reform. Some of these tort reforms were, in fact, adopted by the government in Bill 69 and Bill 70. Other tort reform measures were costed but not ultimately adopted. Document 36 also dealt with an issue of what the cost of insurance would be were the minimum statutory limits in Ontario, which are \$200,000, reduced to some lower level. Ontario has the highest requirement for mandatory insurance in North America, so there is some thought that maybe we should look at that. In the end, as the members know, that was a bit of a dead end, but we have provided that information.

0920

Document 39: Two issues have arisen in the standing committee quite regularly and the ministry perceived that the members were

particularly interested in these two issues: psychological injuries in relation to the threshold and the increase in long-term care costs from \$1,500 to \$3,000 or \$2,800, which were the numbers that were put forward by various groups.

Although there was information in some of the earlier documents in relation to long-term care costs and psychological injury or threshold injury, it was not "clean," in the sense that you could read it but you were not sure whether there was some other factor in the actuarial report that could have affected the costing. So we thought it would be useful to try to cost very specifically these two narrow questions, and this was the document that was requested and provided to the ministry and now to the standing committee after the introduction of the bill.

Having gone over the grouping of the documents, I would be pleased to answer questions and also to indicate that, were it the will of the standing committee, we would be more than willing to meet with Mr McNaught, the researcher, to assist in whatever way we can on a technical basis.

The documents before you will show a very wide range of professional judgement by actuaries. You will find that looking at exactly the same information or being asked the same question, actuaries will give you very, very broad ranges of different answers. I thought it would be useful to explain how that really happens. I should note that I am not an actuary; like most lawyers, I became a lawyer because I am not very good at adding and subtracting. But, in my view, when you look at the actuarial reports you see essentially three factors that give rise to these differences of opinion.

One is that there are different assumptions about what the current situation is. One actuary will say, "This is what the current situation is." Another will differ. Secondly, there are often very different views about what will happen in the future; what is the probable reaction in the future, for example, to the introduction of the no-fault system. Lastly, the actuaries do use different evidence. They usually have good reasons for using different evidence, but obviously if you use different evidence, you get different results.

What actuaries usually do is they go through a process of giving you a range of estimates. They say, "Okay, in my professional judgement, looking at all these assumptions, using this methodology and mathematical calculation, I think the most likely thing to happen is between

this range and this range." They then go through a process of saying, "In my professional judgement, the right answer or the most likely answer is here." They do not just do it on an average basis. For example, they might say the range is between five and 15, and they will not just say, "Well, yeah, okay, then it must be 10." They will say, "In my judgement, the most likely answer is eight or 12.5 or whatever."

I tried to give you three examples on pages 8, 9 and 10 of situations which I think illustrate the point I am trying to make about what actuaries decide and how they have differing assumptions and, when asked the same question, will give different answers.

The first example is essentially different assumptions about the current situation. For example, what is the current level of rate inadequacy or what is the most appropriate method of rate methodology to lead to an adequate rate? In this regard, I have referenced documents 26 and 28 and also there are some differences of opinion between these actuaries and the approach taken by the Ontario Automobile Insurance Board, and in some of the documents you will see the actuaries referencing that.

In document 26—and this is just to give you an example—the actuaries were asked to give a calculation of an adequate pure premium. This is the first time I have used an actuarial term. "Pure premium" simply means the premium without the overhead expenses, without the commission, without the investment income. Essentially it looks only at the claims pool: how much premium goes in to pay for the claims and how much goes out for the claims.

When asked to cost the exact same product, Eckler said that the pure premium cost for this hybrid threshold product was \$435. Mercer said, about the same product, that it was \$758. That is a very wide range of opinion, and yet they were asked the same question.

Another document that I thought might be useful in this regard was document 28. There was a meeting of actuaries in order to develop their professional consensus on a number of issues. For example, what were the operational losses of insurance companies, if any? What were the total losses of certain companies in 1988; their total loss as opposed to their insurance operation costs? In that document there is some consensus on that issue. Then the actuaries were asked, "What is the 1990 potential rate inadequacy if there is no change at all?" The best they could come to, given the fact that they all have validly

held professional opinions, was that the range of rate inadequacy in 1990, if no change was made at all, was between 29 per cent and 44 per cent. This fairly wide range appeared.

Mr Philip: May I stop you and ask a question for clarification? What you are saying is that if this legislation is passed, we are looking at actuarial projections of increases in premiums in 1990 of between 29 per cent and 44 per cent.

Ms Parrish: No. That prediction was if there is no product change at all, if we maintain the current system and do not make a product change. The actuaries were asked, "What is the likely premium change?" and the range of opinion they gave professionally was between 29 per cent and 44 per cent. That is what they said. I think the minister has indicated that in his judgement, looking at the information, it would be between 30 per cent and 35 per cent.

Mr Kormos: Eight per cent to 50 per cent.

Ms Parrish: I think that is a somewhat different question, Mr Kormos.

Mr Runciman: May I get a further clarification on that?

Mr Philip: That is without the \$143-million subsidy from the taxpayers, is it not?

Mr J. B. Nixon: Mr Chairman, why do we not let them finish?

Ms Parrish: The question the actuaries were asked was, if there is no change at all, if nothing at all happens—

Mr Kormos: No change of government.

Ms Parrish: If there is no change in the insurance world. They are good at predicting; they are not good at predicting everything. If no change at all was made, absolutely, if the current system was continued and there was no change—

Mr Ferraro: The status quo.

Ms Parrish: —if the status quo was maintained and the only change that was made was tort reform, then what would happen? The range was 29 per cent to 44 per cent. I am bringing that forward essentially to indicate that they do have a fairly wide range of professional opinion.

Mr Philip: Did anyone calculate what the range would be, keeping the same system, without this present legislation, if there were the kind of \$143-million subsidy which the government is giving under this bill?

Mr Runciman: Plus tort reform.

Mr Philip: Plus tort reform.

The Chair: Maybe before she answers that—I had to leave for a second—are you finished going

through the thing or did we get into clarifications that are turning into questions?

Ms Parrish: I think a little bit of the latter. I have only about another five minutes but I can wrap up quite quickly.

On page 9 I have flagged examples where there have been differing assumptions about future behaviour. The most dramatic difference in predictions about future behaviour comes into the area of the utilization of medical long-term care and rehabilitation benefits.

Although the actuaries have done a lot of work on this, in many ways it is a fairly straightforward question. The argument or the discussion really goes like this: Many people think that if you introduce a no-fault system the number of people who will claim for benefits will increase. That is what many people think happens in a no-fault system. That is called, in actuarial jargon, utilization; more people will claim for benefits than have in the past. The actuaries differ quite dramatically on what they think will happen in a system in which recovery is primarily on a no-fault basis with tort recovery for very serious cases. It affects the costing of the product fairly significantly. The documents that are relevant are documents 24, 27 and 30.

0930

The assumptions made about medical long-term care and rehabilitation by Eckler Partners were that the frequency or the number of claims for these kinds of benefits will not continue to trend upwards. Essentially, the introduction of a primarily no-fault system with enriched benefits will not make much of a difference to the behaviour of claimants. He also found in his work that the long-term care costs are claimed by 0.2 per cent of the claimants of accident benefits. So he found, in his view, that utilization would not significantly change.

Mercer's assumptions in document 27 are very dramatically different. They say that utilization would be four times that predicted by Eckler Partners. They have used the Michigan catastrophic claims fund to show that when threshold no-fault was introduced in Michigan there was a very dramatic increase in utilization rates. In fact, the Michigan level of utilization is at least seven times that of the current Ontario experience. I assume that Mercer's did not move to seven times because they recognized that the Ontario environment was different.

Sobeco had a different number than either Mercer or Eckler. They looked essentially at the Quebec experience between 1983 and 1985. They then made certain adjustments for the

different accident experience in Ontario—Ontario has a lower incidence of auto accidents—and made a calculation that would have led to 1.17 per cent claims frequency. They also found that the number of people who claim long-term care costs is 2.5 per cent of all accident claimants. That is quite a dramatically different number than the Eckler number of 0.2 per cent.

I raise these to show the kinds of assumptions and discussions the actuaries have in coming to their determination and deciding what is the appropriate costing.

On page 10 I pointed out areas where differing evidence may be the reason we get different actuarial answers. For example, we give some document citations. There are two examples. One of the things the actuaries want to know is the number of wage earners who will be disabled for more than three years, because that could have quite a significant impact on the cost of insurance. They want to know the number of people who will make claims for the \$450 for a very long period of time. Eckler used essentially the Osborne and IBC database while Mercer used the Michigan catastrophic claims fund database and as a result of their actuarial judgements on this area alone—ie, the issue as to how many wage earners are disabled for more than three years—it makes a difference of over \$40 on an average policy.

In addition, on the medical and rehabilitation costs, Eckler used essentially the Osborne claims survey; Sobeco used information from the Régie d'assurance in Quebec and much of the Mercer evidence came from the Michigan catastrophic claims fund. Tillinghast, in document 39, uses all of their data and also uses some of the OAIB data. To some degree it is a question of judgement as to what evidence is most likely to be like Ontario in a new system of insurance.

Should we look at Ontario's past experience? Should we look at Michigan, which is a very different jurisdiction but does have a threshold system? Should we look at Quebec, which is probably more similar to Ontario than is Michigan but has a pure no-fault system? On the other hand, the Régie has a very good database, so it is really a question as to the quality of evidence and so on.

Last, I would like to speak very briefly about the fact that most of these reports—with essentially the exception of the document that I have referred to before, document 21—use actuarial averages. The problem with actuarial averages is that they do not really tell you how individual people are impacted on in different circum-

stances. Averages do not tell you how wide the distribution was that went into the average.

If you look at a \$10 average, you do not know whether or not that means that most people will get a premium impact of between \$8 and \$12 or whether you are going to have a range that could be between \$1 and \$25, so it does not tell you very much about how wide the distribution is that might go into making up the average. You know that it is a \$10 average, but it does not necessarily tell you how that may impact on the individual.

Also obviously the actuaries, although they are aware of companies and work in a professional environment, do not always know, cannot predict on an actuarial or theoretical basis how market forces and the portfolio mix of any given company may affect pricing. The one point I guess I would make is that if you look at a \$40 average premium impact, that could actually translate into a \$65 impact if you were a Toronto driver. If you were a Toronto driver who commuted, that average could be \$100. Similarly, you could have someone living in a rural community who does not drive very much and the actual impact on that person could be \$20.

That completes the technical overview, Mr Chairman. Thank you, members of the committee, for your kind attention.

The Chair: Before I turn it over to the questioners, we may run out of time in terms of questions, comments, clarifications, etc. I am going to suggest an alternative time slot. If we started at 1:15 or 1:20 this afternoon and went for another half-hour or 40 minutes before we started hearing from our presenters at two o'clock, would the ministry staff be available for that?

Ms Parrish: We are certainly at the disposal of the committee in any way.

The Chair: Having said that, Mr Philip or Mr Kormos—Mr Runciman is gone—for up to seven minutes, whoever wants to lead.

Mr Kormos: I note that the Kruger report on his examination of the three models was released 14 July and was commissioned 2 March 1989. I also note that documents up to document 36 were all prepared prior to the release date of that document, that is to say of Kruger's report, his assessment or evaluation of the three models.

Which of the first 36 documents that the government obtained at a cost, as we know now, of hundreds of thousands of dollars were made available to Kruger and were part of his inquiry? Let me help, because I find the name Eckler Partners and I do not see Eckler as one of the witnesses making submissions to Kruger and the OAIB.

Mr Ferraro: Let me answer it this way. The suggestion is that Kruger was doing studies, and indeed he was. It is also evident, quite frankly, and I think this is the point you are trying to make, that the government had also commissioned some actuarial studies on its own. The reason quite simply is, as I think has been pointed out, that with the variance in actuarial assumptions and conclusions, the government just felt it was wise to get a broad spectrum of opinion in order to make its conclusions.

Mr Kormos: Do you mean you purposely withheld material from Kruger and the OAIB?

0940

Mr Ferraro: No. I am saying Mr Kruger was independent in calling any and all actuarial evidence and reports that the commission deemed advisable. It is the custom in all ministries, to my knowledge, that if further information is required in order to get another opinion, it is entirely within their purview. It made all the sense in the world, in my view.

Mr Kormos: Did the government offer any of its almost quarter of a million dollars worth of reports to Kruger and the OAIB?

Mr Ferraro: I cannot answer the question whether or not some of the reports were made available. Maybe the deputy can help me out there.

Mr Simpson: I think the way it operated, Mr Kormos, was that Mr Kruger had his own actuaries. I think he had Tillinghast engaged and he had Mercer on retainer to do the work for the board. They did some actuarial studies which were in fact released in advance or concurrently when their hearings started.

I think they would say, in their view, they had an adequate and complete coverage of the actuarial front. The work we were doing was somewhat different from theirs in that we were still looking at a range of products, different kinds of alternatives to things than the reference hearing was covering. So our effort, which was in the early stages, as Ms Parrish I think pointed out—we looked at six different models—was continuing down that line. We simply wanted to have some work going on of a fairly modest nature at the time that prepared us to pick up where the auto board left off with its experts and its testimony and so on.

Mr Kormos: What bothers me is that the first of these documents is dated January 1989, long before the order in council of March 1989. Does this mean the government was conducting a secret inquiry simultaneous with the multi-

million-dollar OAIB inquiry, the government's inquiry designed to reach a certain conclusion different from its public inquiry?

Ms Parrish: The original group of documents that we referred to as the initial study were designed to narrow the focus, to decide what were the most likely insurance products that the board could then review. There are literally hundreds of variations of insurance products, and what those studies were really designed to do was to decide what should be referred to the OAIB in a reference hearing.

Obviously, when an important hearing of that type takes place, you do not just tell them to review anything. You attempt to narrow the area of inquiry and to give them some specificity. For example, three potential models of choice were looked at and then, ultimately, one chosen for reference to the auto board. So the initial series of documents were really intended to develop some sense of focus which would then be the subject of the hearings. It was desired that the OAIB be able to conduct its hearings completely independently and without any sort of bias from conclusions that may have come from some other reports.

Mr Kormos: In view of the fact that you have told us that the ministry recognizes that actuaries reach different conclusions, perhaps even based on the same facts, did no-one in the ministry think it would be valuable for Kruger and the OAIB to have these differing opinions?

Ms Parrish: The OAIB had the full right to call witnesses and to cross-examine them, and literally dozens of actuaries appeared before them. It is not my place to say what Mr Kruger or his colleagues should ask for.

Mr Philip: What actuarial studies would Kruger have done that would have been similarly duplicated in some way by you people?

Ms Parrish: I think you are really asking a question of professional judgement and since I am not an actuary, I feel a little uncomfortable giving you that answer. My view is that the work done by the OAIB was quite different from the work done by the ministry. They looked at somewhat different issues and in the end much of their work was quite useful, knowing certain pieces of information.

I would also point out that the board had a considerable advantage which staff do not have, which is that it has the right to call witnesses under cross-examination. For example, in respect to the actuarial work that appeared before the OAIB, the board released a number of actuarial reports. They then brought the wit-

nesses forward under cross-examination and the witnesses, after discussion and cross-examination, decided to change their minds on certain assumptions, ie, as a result of a process of the board, they were convinced that perhaps they had made an error or that they should change their assumptions in certain regards. That process, including cross-examination, is a process that is—

Mr Philip: I guess I am puzzled by your answer because I cannot understand why Kruger, operating under guidelines from this ministry to look at essentially the problems of insurance and the high cost of escalating premiums in this province, would be undertaking actuarial studies that would be all that different from what you would have wanted to take, having the responsibility of coming up with solutions to the same problem. I just cannot understand it.

Either you are saying that Kruger was off on his own trip then, with no direction from the ministry, or that you were undertaking studies that had nothing to do with the mandate that Kruger had. It just does not make sense. What was Kruger doing that was so different in his mandate from what you were asking to have actuarial studies done on?

Mr Kormos: Millions wasted.

Mr Simpson: Let me answer that. Document 1 that somebody referred to just a few minutes ago, if you look at the index, was a document that was prepared by the Wyatt Co. It was not one we commissioned; it was provided to us by the insurance industry. Other documents at the beginning of the process—you will see among the early set of documents the one Ms Parrish referenced which had six different options.

Mr Kruger, based on the early work, based on a judgement as to what sort of product alternatives, what options there were among the many options that were available, was asked to examine two options: one, the choice system, which links back to document 1 and which was the product of the very early advocacy or the very early material that came to our attention and which was referenced in the list of six, I think, as the O'Connell Joost, and one other variation on that; two, Mr Kruger was given the Michigan threshold model to look at.

That was the basis of his reference, the basis of his work and it did come out quite logically from the early consideration that the ministry gave to the options. At the same time, asking questions, looking at material, looking back at various experience leads the ministry to keep going not on a multimillion-dollar basis but on a fairly

modest basis, continuing to consider alternatives. In fact, as the Kruger hearings were going on we were considering, because it was brought to us for consideration, the proposal of the FAIR group. There was nothing illogical about the series of events.

The Chair: Mr Runciman, I have seven minutes.

Mr Philip: May I just ask one last supplementary?

The Chair: No.

Mr Philip: All of Eckler's studies were done for the ministry. Why were they not tabled with Kruger?

The Chair: Mr Runciman, seven minutes please.

Mr Philip: What a waste of the taxpayers' money.

Mr Runciman: I have a few other questions in another direction. I share the concerns of my opposition colleagues in respect to how this was handled. I think the whole matter, if we go back over the history of the OAIB, has been an obscene waste of taxpayers' dollars if we look at various estimates. Between \$11 million and \$15 million of taxpayers' money essentially has been thrown out the window, while the government was working behind closed doors within the ministry to develop its own plan, following its own agenda, hidden from public view. As a taxpayer, let alone a legislator, I have to express serious concern about the way the government has conducted this whole sordid mess.

I want to ask some specific questions about the report. I was just wondering if there is one document—perhaps Ms Parrish can refer to it—that gives the exact costing of the plan as embodied in Bill 68.

Ms Parrish: There is no document that gives you the exact costing of the plan as embodied in Bill 68 because there is no costing that is identical to the product that you have before the committee. However, because certain changes were made as a result of the OAIB report—they pointed out certain things in their report—certain changes were made as a result of consultation in September and October. But the documents that probably come reasonably close are document 24 and the peer review documents. I will refer you to the final documents: 31, 34 and 26.

0950

Mr Runciman: You have answered my question. "Reasonably close." It is pretty scary actually when you are talking about a bill of this

magnitude and we have to rely on something that is reasonably close.

Could you identify the single largest source of saving as a result of these studies?

Ms Parrish: In all honesty, that is a very difficult question to answer because these studies—

Mr Runciman: Is it difficult or are you simply reluctant?

Ms Parrish: I do not know, Mr Runciman, if you are making a comment as to my—

Mr Runciman: What I suggested is the reduction in benefits to innocent accident victims. That is the single largest source of saving. Is that right or is that wrong?

Ms Parrish: I am not too sure, Mr Runciman, whether you want my answer or whether you want the opportunity to impugn me.

Mr Runciman: I just want a simple yes or no. That would be adequate.

Ms Parrish: I guess I can only give you—

Mr Runciman: I am not attempting to impugn you and do not suggest I am.

Ms Parrish: What I am trying to say is that when you read the material, the material is not structured to give you an answer to that question. What the material does show you is that there is a reduction in the recovery from tort. There is no doubt about that. There is an increase in the amount of money that gets paid out under a pure no-fault system. The degree to which that happens is actually one of the things that the actuaries have disputed the most. For example—

Mr Runciman: Mr Chairman, I am asking the questions. I appreciate Ms Parrish, but I do not like these bureaucratic, lengthy answers which chew up our time. I would appreciate very brief answers to my questions. My questions are brief, I would point out. In essence, this is a significant reduction of benefits, and how they can call this a motorist protection plan is beyond me.

Where are the savings in legal costs identified in this report?

Ms Parrish: The savings in legal costs are not specifically identified.

Mr Runciman: I will not move on—we are going to have some time on this—but I want to just make some other brief and general comments.

I want to share the concerns expressed about the fact that these documents were not made available to this committee when we began our hearings in December. The parliamentary assistant has said they were for the use of puffing up the cabinet. I would like to know, after our initial

meeting in December, how often these documents were reviewed and discussed at cabinet. Can I have an answer to that question?

Mr Ferraro: I cannot give you an exact answer because I do not know.

Mr Runciman: I suspect they were not, but I would love to have that answer.

Obviously there is some negative news in here and this is a bit of *déjà vu* because I went through Bill 2 in the justice committee and, on the last day of our hearings, we had a report tabled with us detailing the Massachusetts experience, which was the only jurisdiction which had a system comparable to that being instituted by the Liberal government in Ontario. On the last day of those hearings.

It seems to me there is obviously some bad news in this. Ms Parrish has referred to the fact that they do not even have an exact costing of Bill 68. She is not prepared to identify the single largest source of savings. There is no reference here and there is no indication of these so-called savings in legal costs that the minister has been going on talking about. There is nothing here in respect to why they were not taking a look at the impact of the OHIP and tax savings to the industry, plus the tort reform. Why were they not factored in as well to give us a good comparison?

I think the government has a lot to account for with respect to this material. The fact that it has been hidden from our view; the fact that it was conducted while the OAIB was conducting public hearings and this was conducted behind closed doors—

Mr Philip: It is a end run around Kruger.

Mr Runciman: It is a very scary piece of business. I think the government has a great deal to answer for.

Mr J. B. Nixon: I appreciate the government's presentation and I am frankly appalled at the opposition's continued inability or refusal to listen. They made quite clearly the point that all actuarial studies have differing assumptions about the current situation, future behaviour and differing assumptions about evidence, yet the opposition refuses to accept that. It is as if these guys say: "Actuaries don't exist. We want absolute certainty." The problem is, Bob, you cannot have absolute certainty. You would love to have it, but you cannot have it. It is like politics, it is just like that.

Then you sit here and the sucking and blowing, the millions of BTUs of hot air that are expelled in this room. These guys have been demanding for days: "Where are the studies?

Show us that you didn't do this in a vacuum. Show and prove to us that you actually thought about it and that you did some work. Prove it. I don't believe you."

They come forward. Look at the documents. We got them all. And they say, "My God, you were doing studies behind closed doors. You tricked us. You sucked us right in. You had us thinking you did this in a vacuum, but in reality you did the work," and now, "Oh my God, it must be an end run around Kruger and millions of dollars."

What are you supposed to do, not spend the money and not do the work or spend the money and do the work? You guys suck and blow all day long. I cannot believe it.

Mr Runciman: The next thing we know you are going to be wearing cowboy boots.

Mr Kormos: He's not stealing my boots.

Mr J. B. Nixon: You guys are driving me nuts.

I have not finished, but I want to get down to something. You guys had the FAIR proposal, the FAIR costing proposal, which was produced by Actrex. It was examined, as I understand it, by three other consulting firms, Tillinghast, Mercer and one other, Sobeco? The FAIR proposal, which many of us are familiar with, suggested a \$5,000 deductible, tort reform and—the basic three elements were a \$5,000 deductible, tort reform, and what was the third?

Ms Parrish: I think there was—

Mr J. B. Nixon: You do not know? In any event, Actrex's costing suggested that there would be a premium reduction in the order of 13 per cent, or something like that. Mercer's and Tillinghast's, from my quick review, said that Actrex's assumptions as to costing were totally unacceptable. Those are my words, but they said certainly that those assumptions were way, way out of line. Can you elaborate as to the analysis done by Mercer and Tillinghast?

Ms Parrish: I think there was quite a dramatic difference of views in the review of the FAIR proposals in regard to the potential cost savings. Actrex found quite a significant cost saving but other actuaries found that the sort of monetary threshold deductible system simply would not save any significant amount of money and that the deductible would have to be extremely high before there was any significant amount of savings. That is why, at various stages, higher deductibles were costed.

Some actuaries were of the view that to get any significant amount of savings you would have to

look at very dramatic deductibles, such as \$40,000. The range of opinion on FAIR was essentially that, the views essentially were that when you introduce a monetary-based threshold you simply get inflation. On the other hand, I should say that the proponents of FAIR disagree with that view and feel that there would not be any sort of judicial inflation in awards to take into account the monetary threshold and the deductible.

Mr Ferraro: I want to respond, if I can. In fairness, I think Mr Runciman asked a legitimate question. The question was: "Where is the costing? How did you come up with zero and eight?"

There is no specific document that, on its own, indicates that this is the range we should take. Some can question that and probably will say that the \$26,000-odd that was spent on these studies was wasted money. We disagree, of course, bearing in mind the stakes involved and the fact that I think approximately \$3.8 billion in premiums are spent by the 6.2 million drivers of Ontario and that we are making a significant, if not massive, overhaul in the way the insurance business is underwritten in this province. I think it would be totally irresponsible if the government did not have a number of views on which to make its final decision.

1000

I say to Mr Runciman, if you are looking for a document that specifically says, "Well, okay, Mr Elston, you should recommend to cabinet zero and eight per cent," it does not exist. There are documents, however, that will suggest—for example, Joe Cheng did one study that indicated that if you wanted to leave the psychological, the pain-and-suffering one that we hear about in committee over and over again, the costing would be approximately a seven per cent increase—6.5 per cent, I think. If you wanted to have indexing, there is a study in there that says it would cost one per cent more on average per premium. If you wanted to increase the long-term rehabilitative monthly increment from \$1,500 to \$3,000, it would be an additional one per cent.

I say, finally I guess, Mr Chairman, that the zero and eight was not something we necessarily pulled out of the air. Although there is no definitive individual study, it was something that not only took a lot of money but also indeed years of consideration from various numbers of actuaries, from tremendous hours of work on the part of the ministry, from reports analysed by the OAIB, Coulter Osborne, you name it, and even some

consultation with the industry, which only makes sense, quite frankly. At the end of the day, the government had to make a decision, which we have done.

I will finish by saying, and I honestly believe this, Mr Philip, that it is almost unprecedented, unless it is a royal commission, for any government to release what was considered in many respects in the past confidential cabinet documentation prior to the passage of a bill, and I strongly believe that to be reality.

The Chair: I am still going to, before we dismiss the deputants, get a consensus of whether—Mr Runciman, while you were out, before you came in, I asked that if there were any further questioning, if they would be available, say, this afternoon from 1:15 to before we started at two o'clock. If you want to hold that as an option, we can still do that. I had you on a point of order.

Mr Runciman: Yes. In following up on your comment, I would prefer to see that done on Thursday, if possible.

The Chair: Thursday in the morning?

Mr Runciman: Whichever, so that we have a little bit of time to try to absorb this ream of material.

The Chair: If we do the same thing, from 8:30 till 10?

Mr Runciman: We can talk to Mr Kormos and—

Mr Philip: I would like to have an opportunity to look through the documentation.

The Chair: Okay. So then can we get agreement, if ministry officials can be available, to 8:30 on Thursday morning, from 8:30 till 10?

Mr Ferraro: We will be here, Mr Chairman.

The Chair: Thank you very much.

Mr Runciman, you had a point of order. Then Mr Philip wanted to table a motion as well, which I said I would deal with at 12 o'clock.

Mr Runciman: I have a point of order, Mr Chairman, which relates to the testimony, especially the fact that the government witnesses have admitted this morning that they have no specific costing of Bill 68. Mr Ferraro has said, "Well, the figures of zero to eight per cent were not necessarily pulled out of the air," and that is his direct quote. On this point of order, I think it is important, based on the testimony we have heard this morning, that the government provide—and up to this point it has withheld this information from the public, relating to the actual

rate increases insurance companies will charge under this new no-fault insurance plan.

I want to say that, through regulations as set out by the automobile insurance board, the government as of 29 January requested every single insurance company holding auto insurance policies to submit specific information about premium increases under the new no-fault plan. The deadline for submitting that information was December or, I think, January. I am not sure about the letters on here. I thought it was 29 January, but my notes say 29 December. I think it was 29 January. Those regulations were printed in the December 1989 edition of the Ontario Gazette.

I suspect that when the minister was speculating or commenting publicly about increases, some of them, being in the neighbourhood of 50 per cent, he was basing it on those filings by the insurance industry. I think that it is terribly important, if not critical, that this committee have that information before us. I think that what we have had before us today is the complete indication of the failure on the part of the government to even cost the program that it is proceeding with, the program that we as a committee are supposed to be voting on.

The Chair: With due trepidation, maybe you could help the chairman understand the point of order a little more clearly so that we know what I am going to have to rule on, whether it is a point of order or not.

Mr Runciman: I guess, Mr Chairman, we may have some difficulty with finding it in the rules of order. But my point was that we had been led to believe that we were going to be provided with information that would effectively answer questions with respect to the implications of Bill 68 on drivers in this province, and in fact that is not the kind of information we are being provided with. We have had clear testimony here today that there is no costing of Bill 68. So that the only effective way in which this committee, the Legislature and the people of Ontario can understand the cost implications of Bill 68 is through the filings that have already been made as required and gazetted. I am saying that indeed perhaps this committee has been misled to a certain degree, if not a significant degree, with respect to what we were going to be receiving this morning. So my point is that I think it is incumbent upon the government and the Minister of Financial Institutions (Mr Elston) to provide the required information.

The Chair: I will take that as a point of opinion because the information that the docu-

ments, the 23 which have now expanded to 39, as indicated by the parliamentary assistant, to some degree are actuarial reports. I will just leave it at that. What I am going to propose is—

Mr Runciman: I will give you notice of the motion requesting that information.

The Chair: For the sake of all concerned, I am going to probably declare a five-minute recess so everybody can do their media interviews and then we will reconvene at 10 after 10. I will take this as notice of motion.

Mr Philip: I have tabled with the clerk a fairly detailed motion. It is a procedural motion—

The Chair: It is being typed now.

Mr Philip: —the essence of which is that since we now have 39 documents, 38 of which were in the government's possession prior to tabling this legislation, and since witnesses have not had an opportunity to comment on that research, that they be advised of the tabling of this and that they be asked if they wish to make further comment on these documents that have been tabled and that this committee recall any of those witnesses who wish to appear and provide comment based on the additional information which has been provided to the committee. That is the essence of the motion. It is a lot more detailed than that and deals with how it can be accomplished.

The Chair: It is being typed now, and as I indicated to Mr Philip, in the past the chair has ruled that we would deal with procedural motions after we have heard the depositions. I am going to suggest at 12 o'clock for that.

Mr Philip: I do not want to hold up the witnesses, so that is fine.

The Chair: Mr Nixon, on another point of something.

Mr J. B. Nixon: With your indulgence, Mr Chairman, on the calling of the additional time allocation from 8:30 to 10 on Thursday, can I get the undertaking of the other two parties that there will not be any votes called at that time? Some of our members have prior commitments, that is all.

The Chair: Can I get that agreement, that from 8:30 to 10 we can continue to use it as a questioning of ministry officials?

Mr Philip: Yes.

The Chair: Fair enough. Five-minute recess till 10:13.

The committee recessed at 1008.

1016

The Chair: I am going to recognize a quorum. I apologize for the delay and welcome Mercantile and General Reinsurance Company of Canada. I

ask the individuals, for the benefit of Hansard as well as the television audience, to identify themselves. The next half-hour is yours. The clerk has distributed copies of your presentation. If you could save us some time for some questions, comments and discussion, we would appreciate it. Please proceed.

MERCANTILE AND GENERAL REINSURANCE COMPANY OF CANADA

Ms Poneta: My name is Janice Poneta. With me are Harold Hopf and Anne-Marie Vanier. We are all with Mercantile and General Reinsurance Company of Canada. We are here to present our views on Bill 68. I am responsible for the claims department across Canada, Harold is the assistant claims manager and Anne-Marie is in our treaty department.

First of all, just in case some of you are not too familiar with reinsurance, we will give you a quick rundown of what we do. Reinsurers are the insurers of insurance companies. We accept shares of risks placed by insurers. We provide them with financial support, technical expertise and various other services, such as consulting and computer systems, basically anything that can help our insurance clients provide better service to their own customers. As a reinsurer, we are one step removed from the ultimate consumer and we have no dealings with the general public.

Mercantile and General is one of Canada's leading reinsurers. We are a subsidiary of M and G, based in London, England, which is a division of the Prudential Corp. All of our claims staff have had several years of claims experience with one or more major primary insurance companies before joining M and G.

One of our functions as reinsurers claims professionals is to visit insurance companies, our clients, on a regular basis and assess their claims operations. This will include discussions with the claims executives, reviewing open cases, open claims files, which we may have an involvement in and assessing the handling of the claims and the adequacy of reserves. M and G's clients include most of the insurers across Canada and we deal with major companies as well as small insurers.

This gives us a very, very broad view of the industry and the practices that are in place now with the present system. We feel that we are in a unique situation to be able to comment on the advantages of Bill 68 and some of the disadvantages that we see with the present tort system, and that is what we are going to show you today.

We support Bill 68 because, in our view, it will benefit the general public and it will provide stability for the insurance industry. The first major benefit that we see is the faster recovery of compensation and increased no-fault benefits that will be available. Our consumers, the driving public, are often not very well served by the present system. Because it is an adversarial system there are delays. Sometimes an injured party can wait several years, up to five or six years, for money for his or her injury.

The automobile insurance policy simply says that it provides the owner with protection against claims for damages by an injured party or by an owner of damaged property. With the present tort system, however, the injured party does not know how much he can receive in the way of damages. He also has to prove fault in order to collect. Now the insurance company, when hearing of an accident, will undertake an investigation right away to find out if there is fault or not, but this often takes several months to complete. In the meantime the injured party is left without any funds whatsoever except for what is presently available under the first-party coverage no-fault benefits. The present maximum is \$140 per week. In some cases the at-fault insurer will also pay advance payments to an injured party, but these will not be provided unless there is detailed medical information available, and hence there are still considerable delays.

The injured people, the claimants, often become very frustrated with these delays, and understandably so. As a reinsurer, we have literally dozens of cases that are still open from the early 1980s, from the mid-1980s, and these are injury cases where people have not received their final settlement yet. We can just imagine how these people must be feeling. They are off work for a considerable period of time, they have no funds except for what is available through the no-fault right now, which, as I said, is \$140 a week. It certainly does not help the healing process for these people if they are in financial as well as physical difficulty.

The major benefit of Bill 68 is that insurers must pay benefits promptly and regardless of fault. There are severe penalties contained in the bill for unreasonable delay of payment of valid claims. For example, the superintendent of insurance will have the power to fine an insurer \$100,000 for a first offence and \$200,000 for a subsequent offence. Over and above that, the new insurance commission will be given the power to publish any information it considers to

be in the public interest, such as perhaps complaints against any particular insurance company.

Bill 68 also provides a faster dispute mechanism. It says if there is a dispute over income replacement benefits, there is a mediation process. If mediation fails, then there is an arbitration process if the claimant so chooses. If a case proceeds to arbitration and the arbitrator feels payments have been unreasonably withheld or delayed by the insurer, the arbitrator can award a penalty of up to 50 per cent of the claimant's entitlement plus interest of two per cent per month. If arbitration should prove unsatisfactory, the case can be finally appealed to the Ontario Insurance Commission.

The next major advantage that we see that there is some potential for with Bill 68 is reduction of legal expenses, particularly on the smaller, more straightforward, simple injury cases. Insurers typically pay an additional 10 to 15 per cent of the value of the claim in costs to the claimant's lawyer, plus of course they pay their own defence lawyers' fees. Over and above this, many plaintiff lawyers charge their clients additional fees. It is the consumers who ultimately pay the legal fees, because they become translated into automobile insurance premiums. If we have a chance of reducing the legal expenses even a little bit, this should be translated into better benefits over a period of time for the consumers.

The last major advantage, probably the biggest one that we see, is the rehabilitation benefits that will be available under Bill 68 and the great improvement over what is presently available. We feel that the benefits of rehabilitation are not widely appreciated by the property and casualty insurance business at the moment. The at-fault insurer has no right to insist that a third party undergo rehabilitation, because there is no contractual relationship. Due to the low values presently available for no-fault benefits, there is little or no incentive for a first-party insurer to encourage rehabilitation either.

Presently, the maximum which would be payable for somebody who is injured, say, at age 20, who is going to be out of work for the rest of his or her life, the most he or she can get under no-fault comes to about \$350,000. With Bill 68, because the no-fault benefits are greater, the rehabilitation benefits that are available are greater. Also there are long-term care costs which are available if required. The total maximum that could be available for one person injured in an automobile accident at age 20 for

the rest of his or her life could be as much as \$2.3 million. There will now be a major incentive for the injured person's own insurer to assist the injured person in rejoining the workforce and society wherever possible much earlier.

Any rehabilitation counsellor or life insurer will confirm that the sooner rehabilitation starts, the greater the chance for recovery. Life insurers have their own rehabilitation departments and they have been much more successful at physical and vocational rehabilitation than the automobile insurance industry. Now the automobile insurers will be using life insurers as a model, and discussions and joint seminars have already started to happen. At the present time, lack of adequate rehabilitation support can actually compound a person's injury by adding psychological symptoms.

Also under the proposed legislation, the wording of the section which deals with rehabilitation is broader. The wording allows for "necessary rehabilitation, life skills training and occupational counselling and training" as determined by the claimant's own doctor. Under the present automobile policy, the insurer presently has the right to appoint its own medical adviser to determine whether the expense is essential for the treatment, occupational retraining or rehabilitation of the injured person. As a result, currently some rehabilitation and medical expenses are being declined by insurers, but the new bill is broader and will provide better coverage. Also, the new bill provides a 10-year limit for rehabilitation—it will be even greater for children who are injured—whereas the present automobile policy only allows a four-year limit for rehabilitation.

To conclude, it is our opinion that Bill 68 provides a new system which is designed to provide better support for the injured claimants, that provides injured parties with the necessary monetary compensation to quickly recover income loss and rehabilitation, thus allowing them to return to full health and to society as quickly as possible. These generous benefits are tax-free, they are payable regardless of fault, and this has to be a better way of serving the public, our consumers, than we presently have available.

We would like to thank you for giving us the opportunity to participate in the public hearings on this important issue and we are open to any questions that you may have.

Ms Oddie Munro: One of the contributing factors to the cost of car insurance is obviously the legal expenses, and you refer to that on page 3. You have lawyers on both sides. I am

wondering, in your opinion on the insurer's side, or even on both sides, what in your experience has been the sort of root cause of delay. We understand that litigation causes delay. I suppose those are the two major factors.

1030

Ms Poneta: Your question is, what has been the root cause of the delays?

Ms Oddie Munro: Yes. You have got two sets of lawyers and you have a claimant who is trying to settle a claim.

Ms Poneta: Partly because the claimant is not dealing directly with the party which is paying his funds in many cases. He is going to his own lawyer and then the lawyer goes to the insurance company's own lawyer who might go to another party who then goes to an insurer. That does create some delays.

The other major situation that we have with the present system is that it is generally not advisable for an injured party to settle with an insurance company until he is fairly sure that his injuries have stabilized. On a tort basis, they have to prove their injury or the insurance company has to agree that an injury exists and they have to agree on an amount of money. It would be very unwise for an injured person to accept a certain sum of money at a very early stage because after he has done that he has pretty well given up his right to recover except in certain exceptions. That is a big factor. They have to wait until they are fully recovered.

Another factor is that the courts are absolutely clogged, and if a case is going to go to trial and everybody knows it is going to go to trial, you can wait two or two and a half years on the trial lists in Ontario. This is gradually getting worse. Even legal proceedings such as examinations for discovery, which are often necessary to reveal the extent of the injury and all the facts to assess the case, often take a considerable period of time.

One of the other reasons is that there are more and more injuries occurring every year. There are more and more people on the roads and the system is having problem coping with them. I think we need a faster way of doing it.

Ms Oddie Munro: Some people have argued that with the court reform the delays in the courts will not be a factor any more. I am just wondering if you have tracked whether or not delays on both sides that are charged back to the client are reasonable or could have been avoided. It is a major factor in the cost of insurance.

Could you also clarify: Does the clock run? Do the legal fees accumulate if the client is not

directly involved in the court or preassessment? I would not have thought that was—

Ms Poneta: The legal fees certainly accumulate. If a lawyer is working on a case for five or six years, he obviously deserves to be compensated for how much time he has put into it. It is basically on an hourly basis, however many hours he puts in.

I am sorry. What was your question prior to that?

Ms Oddie Munro: If you have tracked the incidence of and can clearly give us an idea of the reasons for the length of time that it takes an individual case to get through the courts, so that I can more clearly understand whether it is obstructionist, whether there is not enough time in the courts or whatever.

Ms Poneta: It is a combination of factors. One thing I will comment on is that Ontario is far slower than some of the other provinces within Canada, such as Newfoundland or Halifax, for example, and this is where we think that it is because of the number of injuries, the court system, etc. I think that both insurance companies and lawyers tend to get bogged down with cases and there is a tendency with some of the smaller cases not to push them too much. Maybe the larger cases are the more pressing things. That is a factor.

We have tracked them because as a reinsurer we see the effect of claims that sit around unsettled for a lengthy period of time and, even with the court reforms that have been announced not that long ago, we do not see any major softening of the trend. We have tried suggesting various things to our own clients to reduce the delays, such as, "Try writing to whoever is handling the case and push it or try offering more money up front to try to settle it." There are various ways of doing it. But overall it has not been very successful, and that is very unfortunate, I know.

Mr J. B. Nixon: One of the things I have always wondered about is why insurance companies do not make more use of the provisions of the rules of practice in the province of Ontario that permit prepayment of some parts of claims or all parts. We have heard many stories of frustration from various lawyers and/or injured victims, guilt or innocence not determined in most cases, about their failure to get what they thought was a legitimate prepayment to pay for rehabilitation, occupational training or whatever. Can you comment on that?

Ms Poneta: There have been recent talks, I believe, to try to encourage the greater use of

advance payments. I think each insurance company has its own way of dealing with these things and I think that probably the biggest thing is that there still is a very heavy burden of proof of information and agreement on the value, and because it is an adversarial system it is not stated. Even though an insurer may agree, "Well, yes, this person is going to be entitled to some amount of money," it is still difficult with the present system because the values are not stated up front to say whether that person should receive X amount of dollars or Y amount of dollars, and also a lot of medical information still has to be obtained. Certainly, once an insurer pays that, it has to be sure that on reasonable grounds that is a fair partial compensation.

Mr Philip: I guess I am puzzled. If the bill is as good for the consumer as you say it is, why do you think it is that all of the consumer groups seem to be against it and only the insurance companies are in favour of it?

Ms Poneta: I think the consumer groups perhaps have not had an accident recently and have not had to wait four or five years to get adequate compensation. I think it is very difficult for people if they have never been through it to see how it actually works.

Mr Philip: I guess you have not been following our hearings.

Ms Poneta: I have read some of the newspaper articles on the various submissions, certainly. They have been kind of brief, I suppose, as to what they—

Mr Philip: Certainly some of the groups that have appeared would be what you would call victims: the head injury association, the psychiatrists, the psychologists who are working with victims, certainly the social planning councils that are developing policy to deal with victims. These people have all said that this is bad legislation for the consumer.

Ms Poneta: Are they specifically saying that the fact that somebody would be entitled to \$450 a week up front as opposed to \$140 a week in the past is bad? Is that what they are saying? On what grounds are they saying that the legislation is bad?

Mr Philip: If you have paid any attention, you know that is not what they are saying. I only have five minutes so let me ask you another question. You say that this will greatly reduce the cost by not having any kind of lawyers and also it will reduce time. Of course, if you believe in the Workers' Compensation Board as a great model for saving time you will really love this one.

But I ask you, under subsection 242a(5) would it not be likely that the insurance company that cannot come to an agreement with the insured would be represented by counsel? Certainly they are under the Ontario New Home Warranty Program. Where are the cost savings when the only way in which you could be protected under this system would be to hire a lawyer to go before a quasi-judicial body instead of a judicial body?

1040

Ms Poneta: There are about five questions in one there. How much time do I have?

First of all, I am not saying that lawyers will not be required. They most certainly will. What I would like to see is to have their services better utilized in the larger and more complicated cases. Perhaps where there is an issue as to whether it is a threshold case or not a threshold case and where there is some problem where the insurer is not for some reason providing proper service to the injured party, that is where the lawyers should be involved.

I am not saying that it will greatly reduce the cost at all. I definitely did not say that. I said that there is a potential to perhaps reduce some costs, because at this stage it is very difficult to quantify to what degree people will call on lawyers.

Mr Philip: If the threshold cases are the ones when a person would most likely use lawyers, how would you in any way save on the time, and indeed potential cost, if you are going to have to sue in order to find out if you are allowed to sue and then sue if you are successful in getting that right in court?

Ms Poneta: First of all, the smaller cases will not be in the courts, so there will be a lot more room for the larger cases, which I think is beneficial for both the severely injured and the less seriously injured people. Second of all, you do not have to sue twice. It is a simpler procedure than that that I believe is being proposed to determine whether a case is a threshold case. It certainly is not as complex or as lengthy as a full trial.

Mr Kormos: I am going to cover a little bit of ground that Ed Philip has already covered, but I tell you, sitting here for some three weeks listening to people make submissions, the government has had one hell of a time finding people to come here to support the legislation. One actor has been here three times in three different cities under three different titles. It is incredible. They have moved this guy around and done everything short of putting a phoney moustache and eyeglasses on him.

Mr Runciman: He will be in Ottawa tomorrow.

Mr Kormos: And he will probably be in Ottawa tomorrow.

Look, head injury associations, psychologists, psychiatrists, helping professions, rehab people, police associations, teachers, trade unionists, doctors, lawyers, victims, have all said this is bad legislation.

We in the New Democratic Party have been fighting for better no-faults for a long time. The \$140 a week is a legacy that these guys have maintained with the support of the auto insurance industry. Let's cut that line out right now. How is it that the only people who can come before this committee and support this legislation are from the auto insurance industry?

I should ask you this: I suspect that you had not talked to a single one of those groups I have spoken of—rehab people, head injury people, lawyers, doctors, victims—before you prepared your submission today, because it smacks of so many others that have been brought before this committee by people supporting the legislation, it looks like you read the government's glossy pamphlets and little short of that. I suspect you have not even read the bill; have you?

Ms Poneta: Would you like a copy?

Mr Kormos: I suspect you have not even read it, have you? I have no doubt you have got it.

Ms Poneta: Well, it is pretty dog-eared. There is a lot in it, as you know, as you have read it.

I cannot comment on why other people disagree. I think that is the whole point of a public hearing, is it not, to give each party, each area, a chance to air its views? We feel it is better than what we have and that is the reason—

Mr Kormos: Sure you do. You are going to make more money.

The Chair: Thank you for your presentation.

Ms Poneta: Thank you.

The Chair: Next is Dr Hayes, Future Care Cost Associates. Doctor, please have a seat. If you would identify yourself for the benefit of Hansard, as well as television, the next half-hour is yours. We do not have a copy of your material, but I guess we can obtain it through Hansard. If you could leave us some time in that half-hour for some questions and comments, we would appreciate that as well. Please proceed.

FUTURE CARE COST ASSOCIATES

Dr Hayes: Good morning and thank you for this opportunity to be heard. My name is Keith Hayes. I am a professor and director of research

in the department of physical medicine and rehabilitation at the University of Western Ontario. I am also a scientific director of the Canadian Spinal Centre, Parkwood Hospital in London, which is a centre specializing in research on patients with catastrophic spinal cord injuries that quite often lead to paralysis.

My doctoral training was in the neurosciences. I am not medically qualified. Neither do I have a great command or understanding of the law. Over the past few years, however, I have been called and qualified to give expert witness testimony on the future care costs and extraordinary living expenses incurred by citizens injured in motor vehicle accidents. This testimony has been heard before district and Supreme Court.

From the experience gained in evaluating the future care costs of over 100 clients, I am led to believe that the proposed Ontario motorist protection plan certainly has some merits but, unfortunately, has some adverse and serious consequences for the citizens of Ontario. Given the constraints on time, I would like to focus my attention on three concerns that I have.

The first is with respect to the threshold definition. Where the no-fault benefits are inadequate to cover the injured party's full economic loss or his future care costs, the opportunity to sue for compensation is to be restricted to those with "permanent serious disfigurement" or "permanent serious impairment of an important bodily function caused by continuing injury that is physical in nature."

From a rehabilitation perspective, I have two concerns.

The definition of threshold is based on impairment and injury and does not appear to address, either implicitly or explicitly, the more important issue of the functional consequences or disability associated with the injury. The fundamental distinction between the terms "impairment" or "injury" and the functional disability is much more than a semantic one. They represent quite different concepts, as recognized throughout the world, for example, by the World Health Organization. The phraseology used for the threshold definition is convoluted, rather like doubletalk, to rehabilitation specialists.

Let me illustrate the differences between impairment and disability. An injury leading to a partial loss of hearing, the impairment, may have little functional consequences for a truck driver but be a serious and major career disruption and disability for an orchestral conductor or musical entertainer. The entertainer may have to turn to another form of employment with salary loss.

The threshold based on definition of injury in this case discriminates against the more disabled person. It would be far better to have a threshold based on disability.

Another example: Mild cognitive dysfunction and mild aberrant psychosocial behaviour as a result of brain damage from a closed-head injury may well fail to satisfy the threshold based on injury, especially given the current limitations in the capability of diagnostic imaging technology to reveal evidence of physical injury. The individual may be very disabled for life, but legal difficulties with establishing (a) the seriousness of the injury or impairment or (b) the physical nature of the injury prohibits this individual from suing for recovery of full economic loss. The threshold would be much more reasonable if based on disability rather than on impairment.

The second major concern I have with the threshold definition is the limitation to physical injuries. I am sure you have heard this one before. Psychological trauma can be just as, if not more, disabling than physical trauma. Pain is arguably the worst consequence of trauma, yet because it may be viewed as a psychological consequence, especially if the physical basis is obscure, pain-induced disability will not meet the threshold.

1050

In many cases, it is just impossible to distinguish psychological from physical cause of disability. Many psychological phenomena, such as depression, flat affect and fatigue, all have a physical base, as an injury to the left frontal lobe or post-encephalitic Parkinson's disease. Yet proof of this in a plaintiff may be impossible, and certainly unrealistic. If mild injury to the brain leads to a disabling reactive depression, then it is likely to be impossible to identify whether or not the depression is physically based or reactive; in other words, a consequence of the physical trauma.

The exclusion of psychological trauma is perhaps an attempt to avoid the problem of malingering or false representation of disability. Yet in throwing out the bathwater, many legitimately disabled citizens will be further hurt, this time by government legislation. The threshold must recognize the legitimacy of serious psychological trauma.

My second concern is with respect to the proposed limits on benefits under the no-fault scheme. It is proposed that the benefits for supplemental medical care and rehabilitation expenses will increase from \$25,000 over four

years to \$500,000 payable with a limit of 10 years.

Let us consider the case of a person who is quadriplegic as a result of an accident that he caused himself; for example, by skidding on ice and crashing into a tree. The person who is quadriplegic is almost certainly going to have extraordinary needs for life, not just for 10 years. These needs might include daily anti-spastic medication, medicine for urinary tract infection and depression, medicine for other medical complications, condom catheters and other supplies for bladder and bowel management and many other devices, perhaps some necessary to enable him to breathe, others to allow him or her to move around or communicate. The need for these items does not magically stop after 10 years. When the injured 18-year-old attains the age of 28 years, the time limit of 10 years in this and many similar cases would be quite inadequate to help the individual maintain even minimal subsistence.

One might ask, who will pay? The assistive devices plan will not. He is not old enough to benefit from the provincial drug plan. Moreover, many seriously disabled individuals require most medical care and rehabilitation when they get older, after the 10 years is up. That is because the process of ageing interacts with their disability.

Given that the life expectancy of these individuals is already reduced by virtue of a severely debilitating condition with many late-occurring complications, why not make the benefits available for life? Not doing so will simply overburden the already overburdened provincial chronic care hospitals.

Also with respect to the limits of the benefits, I consider it at best an oversight or at worst deceitful not to have the limits indexed.

My third concern, and the last one I wish to raise, is the no-fault benefits to women who are unpaid homemakers. Women who work in the home providing child care, meal preparation, laundry, shopping, housecleaning, etc., will receive the same benefits as if they were unemployed, a paltry \$26 a day, and then only if they are so severely disabled as to be unable to complete all, or substantially all, of their responsibilities.

Treating the homemaker as if she were unemployed denies the worth of her labours. The cost of her replacement far exceeds \$26 a day, yet not only is she not paid her worth, but unless she meets a very stringent threshold, she is also denied the right to sue for additional expenses. I consider this particular so-called benefit an act of

discrimination that will principally affect women. To my mind, it reflects regressive thinking.

In summary, if the threshold is necessary, at least change it to one based on disability rather than impairment or injury. Second, include psychological trauma or serious psychologically induced disability within the threshold. Three, lift the limit of 10 years for supplemental medical and rehabilitation needs. Four, index all the no-fault benefits. Five, do not treat unpaid homemakers as noncontributing members of society. Provide benefits above that of the unemployed and more commensurate with society's evolving recognition of their worth.

Thank you for hearing me.

The Chair: Thank you. I have Mr Philip, Mr Kormos, Ms Oddie Munro and Mr Nixon for up to six minutes.

Mr Philip: I will not take that long; I want to give some time to Mr Kormos.

Doctor, I am sure that you have very adequately pointed out many of the deficiencies in this legislation, but let me ask you this question. In your practice, is it quite common for you to give evidence in the case of workers who have been injured at work for psychological overlay or psychological damage as a result of physical accident that happens to take place at work and is being adjudicated by the Workers' Compensation Board?

Dr Hayes: No, it is not, not within the framework of workers' compensation. I do do evaluations of future care costs and future needs of individuals involved with motor vehicle accidents who have had psychological trauma.

Mr Philip: I am sure you are aware that if someone were injured at work, perhaps driving a truck, for example, and were therefore covered under workers' compensation and received, as a result, the same kind of psychological problems you have just described in your interesting presentation, he or she would be covered under workers' compensation for psychological damage.

Dr Hayes: I believe that to be true.

Mr Philip: Do you see any kind of sense that sets up a system whereby if you happen to be driving a truck and you are driving in the course of your work, you can be compensated for psychological damage, but if you are driving that truck and you are not involved in driving as part of your work at that point in time, maybe a different time on the same day, you are not covered for an identical accident?

Dr Hayes: I see no reason for the discrepancy there.

Mr Philip: Thank you.

Mr Kormos: I should tell you that some of your concerns will undoubtedly be addressed, because the whole setup here was to—I am not sure it was all that conscious, because what happened was that this legislation was so obviously hastily prepared and now it is being repaired to a certain extent.

The government talked about a consultative draft. One wonders who they consulted with, because we have had just submission after submission after submission from all sorts of people who would have been prepared to offer expertise and assistance to the government in drafting legislation. They appear to have been ignored.

We had a cyclists' rights group here a week and a half ago that pointed out some incredible shortcomings in the legislation, obviously an extreme oversight and obviously revealing the haste with which this was thrown together, without any research, without any preparation.

Interestingly, not only is the whole setup such that it is designed to invite amendments from the government when this committee spends its final week doing so-called clause-by-clause, but even government members are starting to back off now. One government member has been outspoken in his opposition to the bill and we are seeing little bits and pieces of it, quite frankly, across the province, so there is some hope there in that there are some government members showing courage and intellectual integrity to the extent that they are prepared to say, "No, this is bad legislation."

1100

This is legislation that is designed to create profits for the insurance industry and does not give a tinker's damn about the welfare, obviously, of injured people. What is incredible is that we have had insurance—again, you might have heard me mention earlier that the only people, by and large, who have come in here in support of this legislation have been from the insurance industry. They have come in here like veritable Mother Teresas, somehow wanting to create the impression that they want to be social reformers, that they want to help create a better society. That kind of naïveté, the naïveté to buy that is found only on the Liberal back benches. We know they are designed to make bigger and better profits.

Sadly, this legislation as proposed is going to make incredible profits at the expense of victims, at the expense of people crippled by drunk

drivers, at the expense of little kids run down by reckless, careless and negligent drivers. I tell you that it is not a matter of simply amending fundamentally bad legislation. This threshold has no business existing in a society that cares, in a society that is prepared to accept—we have had insurance people here who talk about trading off the compensation for pain and suffering. That is their little gaff, that is their little hook, to talk about trading off. Obviously those are people who have never suffered the way so many innocent victims have to suffer and for whom monetary compensation is but a modest reparation, but as good as we can get in a civilized society.

I appreciate your comments. I am hoping that a few more members of the Liberal caucus—Bob Runciman has spoken of this—generate some intellectual integrity, find it somewhere and speak out as a few other courageous members of their caucus have.

Ms Oddie Munro: In grappling with the right to sue, ie, going through the threshold for psychological reasons, I wonder if you could explain to me what evidence in your viewpoint—you have already mentioned the advances in technology that allow us to document observable, measurable behaviours or responses on the psychological front. Could you indicate to me what measures are available that would be accepted by the courts as bona fide, and second, what the interrelationship is in your estimation between psychological, physiological and physical.

Dr Hayes: I think there must be some misunderstanding there. I did not intend, and I hope I did not give the impression that there are sophisticated techniques available to demonstrate psychological impairment. The psychological disability, the consequences of disabling psychological trauma can be quite easily identified from nightmares, hysteria and attendance at psychiatrists.

One probably does not need to have and one probably will never get electrical pictures that demonstrate psychological abnormalities. As diagnostic imaging techniques improve, there is more and more chance of showing physical evidence of injury that may underlie the psychological trauma, but even in 1990 it is a very primitive state of the art to show the physical evidence of minor brain damage, and yet the psychological and behavioural consequences of that can be devastating.

Ms Oddie Munro: But I am suggesting that all the interrelated sciences have come a long

way in suggesting that those indicators, whether they are responses, or of whatever kind whether it is imaging or simply a verbal response of a client, would be accepted by the court as being evidence of psychological trauma or injury. I do not think we are as far back in the Dark Ages as some people think. We are saying psychology or mental health is something we cannot measure. I have always thought that through a team approach you could get the kinds of indicators you wanted to prove that there has been psychological injury as a result of an accident.

Dr Hayes: There is no doubt that it has come a long way.

Ms Oddie Munro: You are talking about the threshold.

Dr Hayes: The question is, has it come far enough to meet the needs of all the people who are likely to require this?

Mr J. B. Nixon: I would like to talk to you briefly about the so-called discrimination against homemakers in the bill. You may not be aware of the existing no-fault provisions for homemakers. There is \$70 a week—

Dr Hayes: They can sue if that is inadequate. Is that correct?

Mr J. B. Nixon: Let me finish. Seventy dollars a week for 12 weeks and then they terminate after 12 weeks, now—

Dr Hayes: Excuse me, are they limited by a threshold for legal recovery of economic—

Mr J. B. Nixon: If they are among the 50 per cent who can prove someone else is at fault, you are right, they may recover something in the courtroom. Many of them cannot sue anyone else because they cannot find someone to sue or they were responsible for the accident. I am dealing with the no-fault side, \$70 for 12 weeks. That is it.

When you design a no-fault schedule, clearly everyone agrees it has to go up. We have moved to \$185 a week to age 65, plus \$50 per child up to a maximum of four children, \$200 a month, which is something you missed. You missed the long-term care; you missed the in-the-home and the rehabilitation, all those things could be moneys used in the home to assist a homemaker who is disabled partially or fully as the result of an accident. I guess the question is, how high do you go? You have also got 6 million drivers who are very, very upset about premium increases: 20 per cent in 1985, over 20 per cent in 1986. All these things cost money.

I mean, how high would you go?

Dr Hayes: Am I to understand from what you are saying that you equate them to the unemployed, that they should receive the same benefits as if they were unemployed?

Mr J. B. Nixon: No, I am asking you, what should they receive, keeping in mind that these all have an impact on premiums? I mean, how much?

Dr Hayes: One way to approach it is to look at the cost for replacement services.

Mr J. B. Nixon: That, I think, is what we have tried to do.

Dr Hayes: On an eight-hour day or a 15-hour day?

Mr J. B. Nixon: I was trying to point out to you that it is \$185 a week plus \$50 per week per child, plus the rehabilitation benefits, plus the care benefits in the home. When you add them all up, it is not fair to say just \$185. It is \$185 plus, plus, plus.

Dr Hayes: Right; I understand that. I would like to know the source of your information because that is very important information that I—

Mr J. B. Nixon: It is in the glossy little pamphlet that Mr Kormos objects to. It is in the regulations, which are public and I will be happy to go through that with you afterwards.

Mr Runciman: It is the same sort of rhetoric that no one on this committee, and I do not think anyone in the province of Ontario disagrees with. The no-fault benefits were overdue for revision and upgrading and meeting the needs of today's society. What all of us—yourself included, certainly the bulk of witnesses who have appeared before this committee—have been concerned about is the removal of rights.

In fact the actuarial studies—I do not know if you were here, doctor, earlier—even though they do not deal specifically with Bill 68, indicate the single largest source of savings is a reduction in benefits to innocent accident victims. That is the bottom line. Although the minister and his cronies have been going around shouting about legal costs, they did not even touch on the savings from legal costs in all those actuarial studies.

Indeed, this whole exercise to a significant degree, in terms of the hearings process and the later deliberations of the Legislature, is pretty much of a sham. When the government admits that it does not even have a costing of Bill 68, that is very disturbing news.

Sir, I am asking you a bit of a risky question here. Do you have any political affiliation with any provincial political party?

Dr Hayes: No, I do not.

1110

Mr Runciman: Why are you appearing before this committee?

Mr Hayes: I have seen enough people go through my office devastated as a result of injuries, some of which they contributed to, some of which they did not contribute to, including people with obvious severe psychological trauma, who would lose out under the proposed legislation. Because there are so few other people who seem to be speaking out about this, I felt I had a little bit of knowledge to contribute to it and therefore felt that I, on behalf of myself and my two associates, should give our two cents' worth.

Mr Runciman: I want to say that is most commendable. I point out that virtually all witnesses who have come here, other than those who are considered to have a vested interest—the insurance industry, brokers and so on, those affiliated with the insurance; the government has accused those in the legal profession of also having a vested interest—with perhaps one exception in my memory, all the other witnesses appearing before this committee are people like yourself who are genuinely concerned about the implications for innocent accident victims in this province based on their own experiences.

We have had some very emotional, moving testimony from people who have suffered significantly in terms of pain and suffering, etc., and are very much concerned about future accident victims. They are not going to benefit one way or the other because they have already gone through their personal trauma, but they are here because of genuine concern. I simply want to say thank you for making this contribution. It is good, as a legislator, to see people like yourself, who have experience, coming forward to offer a very informed and obviously very sincere opinion.

The Chair: Thank you very much.

Mr Turkstra: I believe the clerk has distributed copies of your presentation. If you would identify yourself for the benefit of Hansard and the television audience, we would appreciate that. The next 15 minutes are yours. If you could leave some time for questions, comments and discussion, the committee would appreciate that as well. Please proceed.

HERMAN TURKSTRA

Mr Turkstra: Thank you. I spent a lot of time getting this down to 15 minutes. I will do my best.

My name is Herman Turkstra. I am a trial lawyer. Mostly I am in Hamilton, and if people do not like that we are also in Mississauga, Guelph, Stoney Creek and Toronto, so you can take your pick.

I have practised for 25 years as a trial lawyer for people who were injured. I have done hardly any of that for the last five years. I have no direct economic interest in this legislation at all. I have held some positions that require me to think about these issues, including working with the Ontario Law Reform Commission on tort reform and working with the Ontario Council on Legal Education. As Ms Oddie Munro knows, I held public office—elected office, that is to say—and I think I have a little bit of an idea of what is going on here and some of the problems that might be involved. To answer Mr Runciman's questions up front, I am a Liberal. I have been a Liberal for a long time and have worked hard for the party.

I am here because I am deeply concerned as a trial lawyer. I have never acted for insurance companies, banks or governments. To the extent that people do not like lawyers, I want to tell you that I am really pleased to be one. I spent 25 years helping people obtain justice and I cannot think of a finer way of earning a living other than perhaps saving souls, doing what you are doing or doing what these people do. I like the work and I am not going to be defensive about my occupation because I think it is a great occupation, and for those of you who are not lawyers, I am sorry you missed it.

In these 15 minutes, I want to talk about five things if I can. One is the judicial system.

The Chair: Before you get too far, we are either going to have to get a travelling mike or move the easel closer to you so they can pick up your valuable words for posterity on Hansard.

Mr Turkstra: I do not know about Hansard; I could scarcely care about this committee.

The second thing I want to talk about for one minute or two is the insurance system. The third thing I want to talk about is the political system. The fourth thing is your best friend. Finally, since we are here to talk about it, I want to say one or two things about the bill. I am sorry that I do not work very well sitting down, so can you get me okay if I am standing up?

The Chair: Do we have a travelling mike? Is there such a thing?

Clerk of the Committee: Yes, there is, but Hansard, I think, maybe has to hook it up.

Mr Turkstra: Are you having problems with me? I can yell.

The Chair: You may have to do that in order for the mikes to get you.

Mr Turkstra: Okay. You let me know if you do not hear me and I will yell louder.

What I decided to do, Mr Chairman, is to borrow your imagination for a few minutes. I need your imagination.

The Chair: My imagination?

Mr Turkstra: Yours. I need you to imagine that you and I are the only two people on an island. You have your business and your house down at one end of the island and I have mine at the other.

Mr Runciman: Two Liberals.

Mr Turkstra: That is okay.

I want you to think about the basic contract that you and I have to make about how we are going to live on that island. I think we are going to finally reach a deal that says you will leave me alone and you will not interfere with my life and I will leave you alone and I will not interfere with your life. So we will get a basic social contract. As long as we do that we will not have any conflict. But if I come around the corner one morning and you are there and I have a stick and I take a swing at you with the stick, and suppose I connect and hurt you, then you are going to want to do something back.

It is built into you, into me and into every person in this room. If instead of just you and I on the island there are maybe 1,000 people, you will have some relatives and I will have some relatives, and you will have some friends and I will have some friends, and if I take that stick and I hurt you, your relatives and friends are going to come after me and my relatives and friends are going to want to come after you.

I want to take you in this committee, if I can, on a little, small survey of what our civilization has done about that over several different places and several different times. It starts on page 5. This is hilarious.

The Chair: They are still not picking you up.

Mr Turkstra: They were not picking me up.

The Chair: That is good.

Mr Turkstra: I am talking about a modern social bill and I want to take you back to Exodus, because I want you to understand how the people in the eastern part of the Mediterranean worked this issue out. They said that if you smite another person, you will "cause him to be thoroughly healed." That was 1,500 years before Christ. Thoroughly healed, the rabbi said, meant to pay him for the disfigurement, for the shame, for the pain, to look after his doctor and to make him whole.

Five hundred years before that, Hammurabi set it all down in the code and he said, "If you strike the body of a person, you pay him 10 shekels of silver." So if I hit you, I would have to pay you the 10 shekels of silver. When Confucius was asked about that 500 years before Christ he said, "Requite injury with justice." If you went to what the Romans did a couple of hundred years before Christ, they outlawed the blood feuds and they said, "Let there be retaliation in kind unless he make an agreement in settlement with the injured person." Napoleon looked at it and he said, "Every human act which causes harm to another obliges the one through whom the fault occurred to pay damages."

I bring you this morning the wisdom of 35 centuries of the human experience. What that boils down to is that societies everywhere in this world have said: "Vengeance is recognized as a natural drive of human beings. We will make that unlawful, and to restore the balance we say the injuring person must do something for the person who was injured." There is not a legal system that does not recognize that, because when you take away the right of blood feud, the right of retaliation and the right of revenge, the social contract we have now made is that I must compensate you for the injury that I do to you. So now your brothers and your friends cannot come after me because the state has said they cannot do that.

1120

I have looked after literally hundreds of people who were injured in car accidents and time and time again I have seen the injury, the anger, directed at the driver who came through the red light; the drunk who crossed the centre line; the person who was driving so fast that he could not control his car. If you are going to heal people you have to dispose of that anger. I know how our system disposes of that anger today; it does it with money. I have handed cheques across the table for pain and suffering to literally hundreds of people and I have watched it work. It works. The money heals people; it dissipates the anger, it dissipates the cynicism.

There was some reference here to the Workers' Compensation Board. For the first 20 years of my life I used to see people regularly and I would have to send them away cynical and angry and upset and frustrated because I could not get justice for them. I could not get the balance back. I could not put them back in tune with the real world any more.

I want to testify here to you today that the judicial system in Ontario works to enforce our

social contract. It works; it genuinely works. It restores the balance. The tort system provides a very important role, as it functions today, in getting rid of that anger, getting rid of the feeling of vengeance. And, strangely enough, it lets the defendant live, because it identifies where the blame is and it makes the consequences clear and the guilt livable. So I am asking you today, do not tamper with this system. That is item 1: the judicial system is functioning.

Item 2: I want to talk about the insurance system. It is a system that takes money from four million or six million people and it puts it into five or six or 25 or 40 companies and then it sends it out. What do we know about where that money goes? I actually found it very hard to find out where all that money went.

Maybe you know and maybe some of the documents the government has show where it all went and maybe my figures are not exactly right, but on page 9 I put down the best information I could get from everybody from the superintendent of insurance to the Osborne report, to insurance companies and agents. You will see there is a very simple breakdown of where that money goes. Something in the area of 15 per cent—please do not take my proportions exactly right—stays with the insurance companies—

The Chair: Wait; time. We have got a travelling mike.

Mr Turkstra: Great.

The Chair: Even though this is not a courtroom, we will let you stand if you want.

Mr Turkstra: All right, thank you. I appreciate that.

Mr Ferraro: We are getting very liberal about these things.

Mr Philip: It is a good thing Moses was not a Liberal or we would have had 100 commandments.

Mr Turkstra: We have 15.7 per cent staying with the insurance companies; 23 per cent paid to garages; 14 per cent paid for victims' loss; 2.6 per cent paid to third parties; family law reform claims and interest accounted for some 9.7 per cent; party and party costs paid were about 6.8 per cent; and everything for pain, suffering, disfigurement, loss of career, parts of bodies and emotional harm took 28.05 per cent.

I do not want to vouch for the accuracy of these figures and I expect that you are going to have much better information.

Mr Kormos: Are you kidding? You should have been here this morning; they have none.

Mr Turkstra: As I said, I went through what Mr Justice Osborne wrote. That is basically what the insurance industry does with the money people give it.

The next two charts are why I think you are here. The green chart shows you the average premiums per year expressed in 1981 dollars, from 1975 through to 1986, which was the last information I had. If you watch the premiums line, it goes up and it comes down and then it moves along and it comes up there. If you look at the cost of the liability claims on a car, you will find it dropped here for some reason and it has climbed relatively steadily. This is profit here, and this is loss there. You understand why there was suddenly a major outcry because, if you watch what happened, this is where the premiums came up. That is one type of insurance.

Now let us look at the next type. These are accident benefits insurance. Here are the premiums; here are the claims; there is the profit. If I am managing an insurance company, I do not have to be a genius to understand that if I am in the business of liability insurance, my profits are obviously going to be a lot more stable if I am in the accident benefits business than if I am in the liability business. The fact of the matter is that what Justice Osborne demonstrated was that the insurance companies mismanaged their own industry grossly for about five years. Why would an industry be dropping the sale price of its product when its cost of doing business was steadily increasing? Here is the sensitive point where this whole machinery of getting the government involved started.

Let me say that in 25 years of dealing with insurers I never met a claims manager who really had a deep-felt concern about injured people. I do not say that from a point of view of bitterness; I say that from the point of view that it is their job. They send adjusters out to get releases signed for 50 per cent of the claim. They grievously delay the payment of no-fault benefits to the point where people are just punched into settling with them. They send investigators out to get lifestyle analyses done to hurt the people who have been hurt. So I do not come here with a very great sense that the insurance industry is here to look after injured people, and I do not think it comes to you as an industry that has managed its own cost-price ratios very effectively.

I then said to myself, why are the insurance agents not here saying this bill is terrible?

Mr Philip: They are afraid of insurance companies.

Mr Turkstra: No, because there really is not going to be any pain to them as a result of this bill. No one has suggested that in some fashion insurance companies are going to lose less. Why are the garage owners not here? They are affected by this whole system. There is not going to be any change in what gets paid to the garage owners and they love it. They have got their new computer systems. They are just in great shape. The minister says there will not be any diminution in wage loss. He is an honourable man and I take his word for it and so I put those two in the same way.

The hospitals are not really here to tell you they are going to get less out of the system. We know that everyone says the interest claims are going to be reduced because this is all going to be speedier, so I cut it in half. I know that everyone says the lawyers are going to make less money, and that is great, so I cut that in half. If you start with the proposition that there was a 35 per cent increase proposed—that is what started the public concern—and you cannot handle more than one-digit increases in premiums, where does the hit come? I cannot figure it out exactly, but before you finish I hope you figure it out exactly, because where I figure the hit comes is on the people who are hurt.

I do not know any other answer to that question and I have looked at everything that I have been able to get. I came here today to say, as a Liberal, I did not work for this party, nor have I supported it for a lifetime to have it take money away from injured people and give it to insurance companies and vehicle owners in Ontario. It is wrong. It is morally, philosophically wrong and that is why I am here.

I would like to talk to you for a minute about—

The Chair: I am sure you are very conscious of the time. You have touched on only two points. I will give you two minutes to wrap up.

Mr Kormos: I am prepared to remove my time in favour of his submission.

The Chair: Can I get the same agreement from Mr Philip?

Mr Philip: Sure.

Mr Runciman: I would like one minute.

The Chair: One minute. Okay.

Mr Turkstra: I can go very quickly.

The Chair: You have another three minutes.

1130

Mr Kormos: That is the whole problem with this process all along. We can hardly—

The Chair: The witnesses are informed of the time they are allocated. In fact, the witness who is appearing before us today requested an appearance after the cutoff date and we are accommodating that. Please proceed.

Mr Kormos: I am prepared to hear more witnesses.

Mr Turkstra: I want to talk to you about your best friend. His name is Coulter Osborne. He did a wonderful study of this issue. He went to Michigan; he went to other places; he talked to all kinds of people. He did the job thoroughly. He gave the government of Ontario a report that is exactly correct. He is wise, he is knowledgeable, he is experienced and he is bright. I say that with due respect to the fact that he is a Supreme Court judge and I should not be commenting on his personality.

This report is the answer to the questions that have been put before you. Its bottom line is that we in Ontario have the best system for the resolution of the claims of injured people in North America and we should be exporting it; we should not be importing systems from Michigan or Vermont or some other place where they are having their own problems.

I plead with you not to finish your job in this committee—and I say that to each member of this committee—until you have read what Coulter Osborne had to say about this system.

The final thing I want to say to you is about the bill. The threshold clause gives such leverage to the insurance companies that you just cannot even start to imagine it. You have not sat across the table from really experienced, tough insurance lawyers who take advantage of every single, possible leverage or weakness in the system to delay the payment or cut it down.

I am telling you, as a trial lawyer, that threshold is a gift to the insurance industry. They will use it and they will wreak all kinds of damage on injured people with it, because it allows them to come back and back and back. Every time, somebody is going to be sitting down with the lawyers for Allstate or the lawyers for State Farm or the lawyers for Co-operators and they are going to say: "Maybe halfway through the trial some judge will find out you do not meet that threshold. How much are you going to give me for that eventuality?" And people will give up what they are entitled to because of that.

The second thing about the bill, and I tell you this for what it is worth, is that in my judgement that threshold does not allow for the recovery of serious psychological and emotional harm. I know clients whom I have handed cheques to

who have had the very kind of illness and disability the previous witness talked to you about. They have been unable to function, and yet if you give them a total body scan there is not a bone out of place, there is not a muscle out of place, but the brain is not functioning and they are disabled.

In my opinion, that threshold will keep those people from recovering, and that is a crime. They did nothing to deserve that. That would have been okay in 1700. I do not know how the judge in Michigan who wrote this threshold ever came to that. His mind was back somewhere in the 1700s. That is not a 20th-century threshold and, with great respect, it is wrong. Whatever else happens here, I hope it will change before you are done.

I am sorry to run over my time. Thank you for the travelling mike.

The Chair: Mr Runciman for a minute and Mrs Lebourdais for a minute. That is all we have time for.

Mr Runciman: Very quickly, I want to commend you on your comments and the work you have obviously put into this.

I know this is going to sound partisan but it is not really that way. I have made an appeal to the Liberal members of this committee since the beginning of our hearings in respect to looking at this in an objective way, and it has not had much impact up to this point.

I want to simply urge you, as obviously a long-standing member of the Liberal Party and a respected member of the Liberal Party, to take a look at what is happening in some of the riding associations.

I believe after going through this exercise and having some unbelievably moving and eloquent testimony, like yours today, it is still not having an impact. The only way that change is going to be brought about is if the grass roots of the Liberal Party have enough impact on the leadership of the party to tell the folks sitting across here that this is what is going to happen. So I am urging you as a Liberal to use your influence within the party to try to effect change, because it is not happening as a result of this hearing process.

Mrs Lebourdais: Mr Runciman, I would like to say that it is not over until the fat lady sings and it is not time for her to sing yet.

Mr Runciman: Is Elinor coming in today?

The Chair: That does not become you as a member of the Legislature.

Mrs LeBourdais: I think that requires an apology to the Minister of Health (Mrs Caplan).

Mr Runciman: You are jumping to conclusions, Mr Chairman.

The Chair: I would ask you to reconsider that statement, which was picked up by Hansard.

Mr Runciman: I am not going to reconsider that.

The Chair: That is fine.

Mr Runciman: You are jumping to conclusions.

Mrs LeBourdais: My apologies.

Mr Turkstra, first of all, thank you for your presentation. It was one I enjoyed very much. I would just like to say that although I agree very much with you in principle that our judicial system works, I do not think it always works equitably. Those who have a higher economic system behind them are able to perhaps hire better lawyers, perhaps find more thorough witnesses, and therefore hopefully have a judgement that is more in their favour.

I think also what gets lost is the length of time and perhaps the legal fees involved. So I think that although in principle it does work, it is a cumbersome system, it is a slow system and it retards rehabilitation in some instances. At least with the new system that we are proposing, the benefits will be guaranteed and they will be fast.

I think a factor that does get overlooked constantly—because many of the deputations that have come before us are people who make well in excess of \$30,000 a year—is that the \$30,000 figure at least addressed somewhere in the neighbourhood of 80 to 85 per cent of the population. There is no question that I personally feel that those who do make in excess must go off and buy some additional coverage to give themselves the protection they should have, but it does cover the bulk. Any legislation can only attempt to get at the majority and we have got after the vast majority here.

Mr Turkstra: May I respond to that?

The Chair: Very briefly.

Mr Turkstra: Thank you. I will do it very quickly.

The Chair: Seeing we are moving on 25 minutes—

Mr Turkstra: I want to tell you that not once in 25 years did I stop to consider whether or not the person came from a high or low economic standard. The question was whether or not they had a case. I want you to know that I am not anywhere near unique. I can walk around my

block and find lawyers who will do the same thing. People do not get access to the courts with injury claims based on their economic status. They get access to the courts based on the strength of their claim.

The only place where there is a weakness is in the marginal cases where some lawyers will not take them and some of us will.

Mrs LeBourdais: There are still good and bad lawyers, regardless of the fee.

Mr Turkstra: Absolutely—good and bad everything.

Mrs LeBourdais: Of course. But that would be a determining factor in the outcome of their case.

Mr Turkstra: Right. Maybe we will not agree on that. Let me tell you the second thing. When it came time to pay out the existing no-fault benefits, the Honourable Mr Justice Osborne described the performance of the insurance industry as abysmal. They have had to come and hire us to collect the existing paltry no-fault benefits because the insurance companies have stalled them and stalled them and stalled them and done exactly the same thing.

The reason people hire lawyers is not because they love lawyers. They hire lawyers because the insurance companies will not be fair with them. If you want to shorten the time, that is fine; if you want to make it easier, that is fine; if you want to cause less in legal expenses, that is fine. Do not kill the system to do that. Talk to the people who delay it, shortchange it and stretch it out.

The third thing you addressed was delay. Sometimes it takes time to understand the impact of an accident on a person's life. I have taken cases that have taken me three and four years to get sorted out. In one case that I can recall specifically, it took me a year and a half to find out what was wrong with the person. The ordinary doctors could not tell and I had to finance people, looking at him, testing him, rechecking, testing all over again. If I had settled that in six months, he would have lost 90 per cent of what he eventually was entitled to.

Mrs LeBourdais: I think you would also agree that in most cases early treatment is also mandatory.

Mr Turkstra: Absolutely. I agree.

The Chair: Thank you for your presentation.

Mr Kormos: Mr Chairman, on a point of order—

The Chair: After Professor Graham.

Mr Kormos: With an apology.

The Chair: Please.

Mr Kormos: If I may—and I do want to apologize—I indeed apologize. Yesterday in Windsor I used language that Mr Nixon, among others, said he did not know the meaning of. I used the word “gurney.” I thought Mr Nixon was going to wet himself. He started jumping up and down, saying: “What does that word mean? What does that word mean?”

I would not want to hide my light under a bushel. If this is the day to increase your word power, we will do it. “Gurney” is a fairly common word. I am surprised Mr Nixon did not know what it meant. I would ask that the clerk receive an excerpt from a dictionary with the word “gurney” and its definition so that now Mr Nixon can use that in his everyday discourse, should the occasion arise to describe a hospital gurney. I apologize for using words that Mr Nixon does not understand.

1140

The Chair: I will take it as a point of information, not as a point of order.

Mr J. B. Nixon: It is not the only word you have used that I have failed to understand.

The Chair: Professor Graham, I believe the clerk has distributed copies of your presentation. I would say that we have approximately half an hour. If in that time you could leave us time for some questions and answers and discussion, we would appreciate it. Please identify yourself and proceed.

W. C. GRAHAM

Mr Graham: My name is Bill Graham. I am a professor of law at the University of Toronto and I teach primarily in the area of international trade law and international economic law, but in the course of that I teach a great deal about the area of dispute resolution techniques. Because of that I was asked if I would speak to the Ontario Automobile Insurance Board during the course of its hearings and I gave evidence before the board. Therefore, I had a look at the legislation that has come out of the process.

I would like to speak to this committee this morning about the no-fault dispute resolution provisions, particularly in section 242. That is really the only purpose of my testimony to you this morning. I would like to speak about the alternative dispute resolution contained in section 242 because I think there is a question or a perception, both in the public and particularly perhaps in the legal community, that the adoption of an alternative dispute resolution technique

may affect the legal profession, obviously, but also that it may impact on the equity of the system and deprive litigants of an opportunity to have their cases fairly heard.

That is the purpose of the first part of this paper I have distributed to you. I do not intend to read it, but I would like to talk about what is contained in it to the committee members.

The first part of my paper that I have distributed to you really sets out some background considerations. There is quite a bit of misperception about alternative dispute resolution techniques in Canada. We are quite a bit behind the United States, but if you look at the way in which we are progressing the system is becoming much more acceptable here.

We are not at the point, I do not think, in our litigation system—Mr Justice Osborne’s report was referred to by the last witness—that they are in the United States where Chief Justice Burger said, “Our system is too costly, too painful, too destructive and too inefficient for a truly civilized people.” But we are getting to a position where there is the problem of court congestion and also the desire of many people to achieve a less confrontational system more designed to bring parties together and recognize the seeds of their own solution of their disputes.

That obviously, in my view, is what section 242 of the bill tries to do. It follows on the experience of what has happened in the United States where as I point out again in my paper you have the American Arbitration Association, you have neighbourhood justice centres established, multidoor courthouses, and in fact in a whole host of areas of law, family law included, alternative dispute resolutions are replacing the courts in the way in which these matters are handled. I would suggest to you that the same thing is happening here in Canada.

In the course of preparing my evidence I looked at quite a bit of the literature, and it is astounding to see how much in the last 10 years ADR, to use the initials that we use, has replaced, really, the courts in an extraordinarily broad set of areas, and is being accepted in all the provinces of Canada in such diverse legal fields as administrative law, labour law, family, criminal, environmental, human rights, and consumer and commercial relations.

The reason I dwell on that to some extent is that I think we have to recognize that it is now time an alternative system, if it is demonstrated to be needed and useful, is acceptable. It is acceptable among the public. It is acceptable, if you like, by the legal profession as well.

What do we mean by ADR? I talk about that in my paper. I suppose the two concepts that are most present in this bill are mediation and arbitration. The distinction is often lost on people what the difference is between mediation and arbitration. Mediation is a process where an individual will get together with the two disputants and try to persuade them to settle their dispute and guide them in that way, and may make recommendations but does not make binding recommendations and does not hand down a decision as to how the dispute should be settled. Conciliation is basically the same process. Arbitration much more closely replicates the court process and is a process whereby parties turn over the dispute resolution to a third party. They have agreed beforehand that the decision will be binding.

We have heard a lot about the advantages of both mediation and arbitration over court proceedings. Mediation obviously removes the very confrontational aspects. Arbitration does too. In addition arbitration allows the parties, often, to select their own arbitrator or to have an expert arbitrator involved in the process. The process is much less adversarial. It is usually in private. It is shorter and less expensive. It is flexible and therefore is a successful and desirable alternative to court.

When I looked at section 242, I really looked at four or five key factors about the advisability of section 242. I looked at it to see whether it was flexible. I looked at it to see whether it was simple so it would reduce costs in time. I looked at it to see whether it was certain, whether it gave certainty to the parties who were participating in the process that their dispute would be resolved within that framework and they were not going to end up somewhere else in court. I looked at it from the point of view of legality. Are there controls in it to make sure that the arbitrators, or the director particularly in this case, performs in accordance with the fairness and that we are familiar with in our system?

In all that I think the committee will recognize that in any system like this there have to be some tradeoffs. If you are going to go for simplicity and certainty in the arbitration system, you are going to perhaps lose some of the legality controls. You are going to lose some of the controls of the court because once you introduce the court process into the system, then you are introducing complexities. You are back into the problems of lawyers before judges and court and loss of time and everything else. So there is a

tradeoff between those two and I will talk about that in my concluding remarks.

The last criterion I looked at is most important in all alternative dispute resolution systems, and this I address on pages 8 and 9 of my paper; it is the object of specificity. Any ADR system has to be specific to the types of problems it is addressing, so I looked at this particular system to see, does it address effectively the problems of dispute resolution or respective no-fault benefits? Obviously if it does not, then it might satisfy all the other issues but it does not deal with the question.

Just turning to those issues, let me talk for a minute about flexibility. I think the system that is set out in section 242 is flexible. In the first place, insureds are entitled to go to litigation if they do not want to use it. They are entitled to go to litigation for the non-no-fault benefits and yet come before this system for the no-fault portion of their benefits.

Within that system there is flexibility in the sense that clearly there is a process of negotiation. Then the section suggests that mediation—perhaps here is something the committee might want to consider and that is that subsection 242b(1) speaks of the fact that the parties “may refer to a mediator.” The language of that might be somewhat clarified to indicate that clearly, reference to a mediator is a precondition, when you read the scheme of the whole, before you can go on to arbitration.

If mediation fails, then the insured has the option of going to arbitration or litigation. Here again I think it is important to put emphasis on the fact that it is the insured's option whether to go to litigation or arbitration. The previous witness spoke of tough litigation lawyers manipulating the system as much as possible. You will note that in this system those lawyers will not be able to go out of the arbitration system acting for the insurance company. It is only the insured who has the option to go to litigation and so it will be the insured who has that option. This is confidence building if the insureds are worried about the system. It is a valuable safeguard, but it is in the hands of the insureds and not the insurance companies. I will come back to that.

1150

The other thing I imagine the committee wants to bear in mind is that flexibility and the way in which the system is going to be working is going to be fleshed out to a large degree in the regulations. We have not seen the regulations, so I am talking about what is actually in the bill, but it looks as if you have good procedural flexibility.

ty. There is ability of the arbitrators to have access to expert advice and the parties can agree to extend the time rules, etc. When you look at this system in terms of flexibility, I think there is a lot of room for party autonomy and that is a good thing in any arbitration system.

The final point I would make with respect to flexibility is that the director here selects the arbitrators. Again, when you come to consider what sort of rules and regulations should be drafted, you are going to want to figure out what sort of pool the director is going to establish for arbitrators.

There is no need for arbitrators to be lawyers or legally trained, although in this system clearly there are going to be some legal issues that arbitrators may have to decide. They may have to decide whether or not the claims are valid, they may have to decide what part of the act they fall under, but in other cases, arbitrators will be addressing exclusively the question of quantum. The Arbitrators' Institute of Canada here in Ontario and other bodies have demonstrated with a lot of experience that ordinary people with business experience, with professional experience, can be trained to be effective arbitrators given a course in the subject, and there is no need for someone to be a lawyer just to be an arbitrator.

I think it would be important for the director to establish a pool of knowledgeable people in this area who are not necessarily legally trained. Again, this system gives flexibility because the director can refer the type of case to the type of arbitrator who is appropriate to deal with that sort of case. I think that is a very good thing to have in this type of a system.

Turning to my next criterion, which was simplicity, I think if you look at this system, it is simple, straightforward: mediation followed by arbitration or court. The regulations again will have to fill in a lot of details. The thing that I would suggest is that the director's role is very important in this. If you look through this whole scheme, the role of the director is going to be capital in this whole system as set up by section 242, but basically I think you are looking at a system that enables parties to participate without the need for legal counsel to guide them through a thicket of complexities. Take for example the appeal procedure. It is going to go to the director. So I think there is a simplicity here.

The third criterion I looked at was the question of certainty. I am now at about page 12 of the paper I gave you. By "certainty" I mean this: any arbitral system has a problem in that because it is

consensual, sometimes it depends to a large degree on court supervision. If you get the courts involved too much in the process, then in fact you are losing the desirability of a simple, flexible, discreet arbitration system because you are back into court with all the costs and all the complexities and all the problems that is attendant upon.

If you look at the system that is crafted here, to begin with it is not subject to the consensual type problems of an arbitration system because it is set down by the legislation. It has certainly built into it and the appeal procedures are there. The appeals will not go to the courts; they will go to the director, who will be experienced in these matters and will be able to handle all these issues.

In so far as controls over the process are concerned, they have removed, for example, the problem of stated cases, which is a problem in the normal arbitration system where lawyers use the system. They do not like what is happening in the arbitration so they say, "Let's take a stated case to the court." Of course the weaker party suddenly finds that he went to arbitration because he wanted a simple, clear, less costly, less confrontational solution to his problem and suddenly he finds himself in court.

This has been removed in this system. The stated case is reserved only to those cases the director may refer to the courts when they want guidance on legal matters. I think that is a very good provision to have retained and to have restricted it. If you look at it you will see that awards are enforceable as if they were a judgement. Here again it is the director who has the responsibility of filing a copy of the award with the court and that saves the insured the expense, the worry: "How do I do this? Do I need to get a lawyer to do this?" It is all in the hands of the director and I suggest that is a very positive provision of the bill.

If you look at the question of the legality of the system—I deal with this in my paper so I will not dwell on it at any length—by "legality" I mean what juridical certainty it is. We want to have a system where people are going to go to something and say they know the types of results they are going to get, and they are going to be treated fairly and justly.

In this system, those protections are there through the Statutory Powers Procedure Act and in terms of court control over the process, particularly the director. Also, the legality will largely depend upon the director's role in hearing appeals. I think that is something this committee wants to bear in mind when the regulations are

being drafted. This system will depend to a large degree on the capabilities of the director who is appointed.

If you look through the process the director appoints the arbitrators, decides issues of bias, hears appeals and will refer arbitrators' questions to the chair of the medical and rehabilitation advisory panel. I suggest to you that the qualities, the type of person and the background of the director will be extremely important for the working of this process.

Then I turn to the question, is this then a good system for determining whether insureds are entitled to no-fault benefits, or what the appropriate benefit to obtain is? I develop this at more length in my paper, but I think it is, for the reasons I set out before: It has flexibility; it has the degree of certainty necessary; it has the degree of legality necessary to make it acceptable to the parties, and it seems to be an expeditious and effective system.

I would say that the one thing I was left with when I looked at the reading of the draft was that it seemed to me the drafters of the rules or the system in section 242 were particularly conscious of the economic inequality between insurer and insured. Here again, the extensive role of the director will contribute to ensuring that the power of the insurers is not abused. The director is given power to challenge sharp practices in the industry or by individual firms in section 242e(9), etc.

All through the section, if you look at it, you see a sort of sense of the financial power between the insurer and the insured in which the director is enabled to redress the balance and the system redresses the balance in so doing it.

As I said, having been involved somewhat at the beginning of the process and being very much involved at the moment in teaching alternative dispute resolution techniques at the law school—there is a recognition that they are becoming more and more acceptable in our community by the legal profession, which I think at the beginning quite resisted them but now is seeing their validity and their value—I just wanted to have a chance to review the legislation from that perspective alone and give you the benefit of my observations, and I have set that out in my paper.

Mr Philip: I take it that you are not practising. Can you tell me, have you practised litigation law on behalf of claimants against the insurance industry?

Mr Graham: I practised for 15 years and I practised extensively in the courts. I was junior to Walter Williston, who was one of the lead

counsels of this city and country for many years. I practised in all of the courts of Ontario. I am a member of the bar of the Northwest Territories and Saskatchewan and I have appeared in the courts of Nova Scotia as well as this province.

Mr Philip: But you have not appeared, at least currently, in the last 15 years, on behalf of claimants against insurance companies.

Mr Graham: At no time in my practice. I appeared against insurance companies for my claimants, but they were largely commercial cases. I was never involved in litigation involving personal accident injury cases.

Mr Philip: What you are indicating is that section 242, the dispute settlement system, seems to simplify this. Would you agree that under section 242 it is very likely that insurance companies that are disputing a claim will have legal counsel—probably fairly good legal counsel—to present their case, be it at the mediation stage or at the arbitration stage? I am sure that since you are familiar with tribunals, you know that if a person dares to appear at, say, the Ontario New Home Warranty Program without legal counsel, one is simply throwing himself into a very awkward situation as a claimant.

How can you say this is going to simplify the system when we have been told by practising litigants that insurance companies will use every legal means to not pay a claim, and they will certainly be using that at this arbitration or this quasi-judicial system? How can you say that it is going to simplify it, since you are going to have to have legal counsel anyway in order to press a claim, either at the mediation stage or at the arbitration stage under this bill?

1200

Mr Graham: I certainly would agree with your original proposition, that the insurance companies are probably going to bring lawyers with them before the system. I do not have any doubt that that will be the case, but the lawyers can only do so much to destroy the system if in fact the system is properly crafted.

It is clear that in the court system the lawyers can use it to extend the time limits, to extend the process, everything. Unless you were to suggest that there should be a provision in here prohibiting anybody from bringing a lawyer with him, which would be a very serious restriction both on the liberty of the insured as well as the insurers, I do not see how one can get away from the fact that one or either of the parties will bring a lawyer with them.

We will have to wait until we see how it evolves, I quite agree with you there. Where it can guarantee simplicity is that the director has control over appointing arbitrators out of an experienced pool who will be perfectly capable of dealing with that sort of issue.

I myself have conducted arbitrations where sometimes the parties are not represented by counsel, they are just commercial people. That can work quite well. If the arbitrator says, "We're not going to allow a lot of legal manoeuvring in here to interfere with coming to grips with it," if you go back to the original mediation stage, for example, I think it is simple there. The New York experience shows that the conciliators in that process settle a lot of these no-fault claims just by dealing with people over the telephone.

But I can see your point. Once the lawyers get in, they try to win for their client and that makes it more complex.

Mr Philip: If we take the only case that I know of, which is the new home warranty program, certainly you do not save in terms of lawyers. If you appear without a lawyer, you are in trouble. It may have changed since Barry Rose took over. He was trying to make the system simpler.

But you say that in general the regulations are needed to flesh out the procedural details. I guess our concern is that we have seen what regulations do in other quasi-judicial systems, and without having tabled the regulations, one cannot really say that this is going to be a fair system for the applicant, can one?

Mr Graham: All I can say is that I think the seeds for a fair system are here, and I quite agree with you, the regulations then will determine how that is going to be applied.

Mr Philip: The regulations have not done very much for the claimants under the Workers' Compensation Act. Why would one assume that this would be any more enlightened, since they have not seen fit to table the regulations so that we could examine them?

Mr Graham: Maybe that is the suggestion of a triumph of hope over experience. I do not know. I cannot speak for the regulations because I have not seen them, but one would hope that they are going to have experienced people drafting them who will try to cure the problems in the old regulations. But I agree, if they do not do that, then this will have problems.

Mr Philip: I admire your faith and I hope that you continue your faith.

Mr Graham: Thank you.

Ms Oddie Munro: Just a point of information, I guess. You say that the Canadian Bar Association recognizes, or at least has reported, programs for alternative dispute resolution in a number of diverse legal fields. I guess you are referring also to the New York experience. Have they been in the area of automobile insurance, personal injury?

Mr Graham: The Canadian Bar Association experience?

Ms Oddie Munro: Any of the ADR mechanisms set up in the provinces.

Mr Graham: In the provinces, no.

Ms Oddie Munro: In New York?

Mr Graham: In New York, yes, and Michigan. There are several systems that have served as the models for this system, at least from reading the report it appears to be. Particularly the New York and Michigan systems seem to have influenced the drafters of this as the model. They looked at how it worked and it seemed to be working fairly well. Like every system, it has its problems, but it is working better than the court system.

Mr Runciman: Sorry, Mr Graham, I missed the bulk of your testimony, but I gather it was generally directed towards the dispute resolution process. By and large, you are generally supportive of the thrust of the Bill 68?

Mr Graham: Yes, although there again—one of my colleagues, Michael Trebilcock, came and spoke to the committee. He was at the law school as well. We discussed the general thrust of the legislation and I have read his evidence and I would agree with what he said to the committee. I would generally be supportive of the thrust of the legislation, yes.

Mr Runciman: Why are you here specifically making this presentation?

Mr Graham: Because, as I said, I had spoken to the insurance board about the problem of ADR and whether it might be accepted, and so, having given my evidence there, and then I saw a copy of the bill, I thought I would just come and see how—I thought first I would have a look at it and see how it corresponded with the modern views of how arbitration and mediation should be conducted. Then I thought I would come and speak on it, since there seems to be a lot of controversy as to whether it is going to provide a fair system or not.

Mr Runciman: Were you encouraged by anyone to appear?

Mr Graham: Yes, I spoke to some people and they did encourage me to come and appear.

Mr Runciman: Members of the Liberal Party?

Mr Graham: Yes, they were—well, whether or not they were members of the Liberal Party, I spoke to a couple of people in the department and they said they would appreciate it if I came to give evidence. But I spoke to them first.

Mr Runciman: Do you have any political affiliation?

Mr Graham: Oh, yes, I am a Liberal myself. I am a member of the Liberal Party of Canada and a member of the Liberal Party of Ontario, and in fact I was the candidate in Rosedale in the last federal election for the Liberal Party of Canada.

The Chair: Thank you, Professor Graham, for your presentation.

I have two motions, one moved by Mr Philip, who is not here, possibly getting powdered for the TV, and another one moved by Mr Runciman.

Mrs LeBourdais: On a point of order, Mr Chairman: I would like to ask that Mr Runciman be made to either apologize or withdraw his comment with regard to the Minister of Health (Mrs Caplan) before he is allowed to proceed with his motion.

The Chair: I will take that as a point of view, as opposed to a point of order, and continue on. Thank you very much.

I do not see Mr Philip.

Mr Kormos: If I may, Mr Chairman, perhaps Mr Philip's motion could be held until after Mr Runciman's is dealt with.

The Chair: Okay. Mr Runciman, you have a motion. Do you wish to move it?

Mr Runciman: Thank you, Mr Chairman. I will move it to put it in the record.

I want to say that I did not mention the Minister of Health. I mentioned a first name, so I am sorry if that has upset the members of the governing party, but they have reached that conclusion. Certainly that was not indicated in my interjection.

The Chair: Mr Runciman moves that the committee not proceed with clause-by-clause on Bill 68 until such time as the government makes available to the committee all information currently filed by insurers pursuant to Ontario Regulation 697/89 and until the minister provides the committee with an undertaking that in the case where insurers have yet to file the information required pursuant to said regulation,

the committee will be provided with that information as soon as it becomes available; and he further moves that the committee not report the bill until it has received and has had an opportunity to review all information filed pursuant to the regulation.

Mr Runciman: Can I make a few brief comments?

The Chair: Yes. Before I allow the few brief comments, I have been advised by the clerk, and I want to get some further direction from the Clerk of the Legislature whether the motion is in order or not. I am prepared to entertain discussion. What I would like to do is table the question of the motion until I have had some further direction, guidance and advice from the Clerk of the Legislature whether in fact the motion is in order or not, subject to the direction that we were given by the Legislature in terms of conducting public hearings and clause-by-clause consideration and reporting back. I say all of that. I still want to allow some discussion, but I want to get some direction as a chairman whether it is in order or not.

Mr Runciman: Okay. Can I ask a question of clarification?

The Chair: Sure.

Mr Runciman: When would the Clerk be prepared to offer that advice?

The Chair: I would assume before we adjourn tonight.

Clerk of the Committee: Which clerk?

The Chair: I am assuming either this clerk or the Clerk of the Legislature. We should be able to get hold of somebody before we adjourn tonight so that he would be able to give us an indication whether he felt that the motion was in order or not. I will make that commitment, that we will have that determination before we adjourn tonight.

Mr Runciman: A ruling and a vote before we adjourn.

The Chair: A ruling and a vote before we adjourn tonight.

Mr Runciman: I guess I can live with that.

Speaking to the motion, section 3 of the regulation quoted in the motion respecting automobile insurance states that the insurance companies were required to make a partial filing of information on 29 December 1989, and the information required as of 29 December 1989 includes: rates and classifications; information contained in current and proposed rate manuals; definitions used in the manual; description of

classes of risk exposure; statement of the rates; general rules respecting the calculation of premiums to be charged; underwriting rules and guidelines; and an analysis of the impact of Bill 68 on premiums in the personal vehicles/private passenger automobiles category.

1210

Mr Ferraro confirmed this morning that the bulk of insurance companies have filed. Apparently there is a handful of firms that have not yet filed that information. In essence, there is somewhere in the neighbourhood of 160 firms writing auto insurance in Ontario and the government has in its hands a very good approximation of the effect of Bill 68 on policyholders.

I have moved this motion, of course, based on the appearance this morning of ministry staff who indicated in response to questions related to the actuarial studies that were tabled that there had been no study completed of the impact of Bill 68; specifically, the no-fault plan embodied in Bill 68.

That certainly raised some very serious questions in respect to the comments that the minister has been making in respect to the zero to eight per cent and the public musings lately of perhaps 50 per cent in some respects, and the fact that as a committee, and later on as a Legislature, we have to deal with this bill and its very wide-ranging implications. I do not think we can do that in the way that we should be doing it without all of the available information, and certainly this most important information on what the costs are going to be to consumers of this province.

We have had the government making pretty significant boasts about the cost reductions and the control of costs in the insurance industry to consumers, but at the same time it has not talked much about the impact of reduction in benefits to innocent accident victims. That indeed is the single largest source of savings in this effort.

They have talked a lot about the savings in legal costs, and the ministry staff indicated there is no indication that these actuarial studies have any savings in terms of legal costs.

I think I cannot stress strongly enough the importance of our having this kind of information as a committee. The minister is, as I said, making public comments about significantly higher increases than he stated when the legislation was tabled in the House. I think it is incumbent upon us, as legislators, to have that kind of information to be able to make a reasoned judgement in respect to the impact of Bill 68 on consumers of this province.

Mr Ferraro: Mr Runciman indicated that indeed we had a conversation, and we did, and I think he used the word "bulk." I just want to clarify that, from the standpoint that I was recently advised that approximately 50 per cent of the insurance companies, primarily, I think it is safe to say, the larger ones, have filed with the insurance board. However, it is my understanding that the ministry is pursuing receipt of the other filings, if you will, from, essentially, the smaller insurance companies. There is some reluctance, albeit particularly from the insurance companies, from the standpoint that they may have to then refile once—and assuming—Bill 68 is passed.

Having said all that, it is the government's intention to make it fairly clear that until the commissioner, who really does not exist until Bill 68 is passed, and indeed the commission, has a chance to peruse and indicate acceptance or rejection, it would be somewhat inappropriate to release it for public disclosure, bearing in mind as well that each of these filings is extensive in nature.

Mr Runciman: I have one further comment with respect to what the parliamentary assistant has said. A staff member of mine contacted Robert Simpson, the deputy minister, and Mr Simpson said that the Ministry of Financial Institutions has received information from all but "a handful of firms."

Mr Kormos: It should come as no surprise that I support Mr Runciman's motion. This whole thing has become most unpleasant, and I suppose for nobody more than Mr Ferraro.

The Minister of Financial Institutions (Mr Elston) was here on the first day of these hearings. He launched the campaign and he set the standard, because he launched it by crapping on the legal profession, by dumping all over Ralph Nader, who lent his expertise to criticism of this legislation, by dumping all over outstanding people, like John Bates, the president of People to Reduce Impaired Driving Everywhere, who has always been eager to lend his expertise to the government in an effort to reduce carnage on the highways.

Then he disappeared. Murray Elston, the minister, disappeared, and he left Mr Ferraro, the member for Guelph, his parliamentary assistant, behind to hold the bag, if you will, and to defend, or attempt to defend, the indefensible, to attempt to defend what virtually every organization appearing in front of this committee has criticized: police officers, police associations, teachers, trade unionists, health care personnel,

victims, lawyers, doctors, rehabilitation experts, organizations of victims of head injury, among others.

Mind you, there was some support. There was support for this legislation from a few, plus the insurance industry.

This committee, and the ministry, I suspect, has had a great deal of difficulty getting people supportive of the legislation to come forward. Indeed, one individual, as I indicated earlier today, has appeared in three different cities under three different labels supporting the bill and attempting to speak on behalf of it.

So Mr Ferraro is left holding the bag. When Mr Ferraro was questioned a short time ago about the documentation that was in the possession of the ministry, he reached into a bag of tricks and came up with an ad hoc response that was there, simply to generate some sort of sense of familiarity with what we were speaking of. When the minister was asked about what he was relying on—and this was back when the House was still in session during question period—to make the claims of eight per cent, he would not answer.

Obviously, people are going to suffer not only significantly reduced benefits under this scheme, but premium increases ranging from 8 to 50 per cent. While the minister and his spokespersons, like Mr Ferraro, may well say that 50 per cent is going to be the top end, it is probably not unfair to say that the bulk of the people will fall in between, and that is to say they will suffer increases of 8 to 50 per cent. That is what the record demonstrates.

After, quite frankly, much ado and much pressure and some significant embarrassment, I presume, to Mr Ferraro—and, again, I have some great sympathy for the position he has been forced into by the minister, and I think that is something between Mr Ferraro and Mr Elston that will have to be resolved in their own private manner—the minister has put Mr Ferraro into an exceedingly difficult position that grows and grows.

This morning the emperor was revealed to be nude. I mean, the emperor has no clothes. The data that were released, in bulky form, as has been indicated before the committee, did not indicate one study which would support any of the claims that have been made so far by the propagandists promoting this legislation: nothing about the mythical figure of \$500 million in legal costs that the expensive Insurance Bureau of Canada advertising campaign speaks of and that the ministry and Mr Ferraro appear to endorse; nothing about the premium increases of 8 to 50

per cent and who is going to suffer them; nothing about the cost to the taxpayer and the cost to workers' compensation, the cost to OHIP, the cost to other social welfare programs that are going to suffer to help pay off this windfall to the insurance industry, and now the discovery that, indeed, somewhere between—this is like the premium increases being between eight and 50 per cent—50 per cent and the bulk of auto insurance companies have done their rate filings.

1220

One can only presume that the minister is getting his information somewhere. Obviously at the onset he was picking figures out of the air. He knew what sold. It is just like the labelling of this whole little package as the Ontario motorist protection plan. What a misnomer. This is a package that is designed to gouge, screw and skewer motorists in an entirely new and more profitable fashion for the insurance industry.

It is imperative that this committee have before it all the information that could possibly be available. We have learned now that Kruger and the automobile insurance board had denied to it information that was in the government hands that could have been useful or valuable to the automobile insurance board; that the government was funding that board with big bucks, taxpayers' dollars, literally millions of dollars, and at the same time having no intention of ever implementing its recommendations because it was funding what we have learned was almost a quarter of a million dollar exercise on its own in secret and, quite frankly, kept secret during the course of these committee hearings.

Now we discover that there is more information available to the committee that the government clearly would prefer to have kept secret. Quite frankly, Mr Ferraro could make this whole motion redundant by indicating to the committee right here and now on behalf of the minister that of course this information will be made available. That would relieve us of any need to even vote on this motion.

Unfortunately for Mr Ferraro, I suspect that the minister has not given him instructions in that regard and it would be difficult for him to indicate that the material either will or will not be made public. Again, in that regard Mr Ferraro certainly has my sympathies. It is unpleasant at any time, regardless of party affiliation, to see somebody hung out to dry the way Mr Ferraro has been by the ministry.

I know that he will reject that proposition, as he has to by virtue of his association, being the mere parliamentary assistant. I respect him for

the strength and courage he has shown in the exceedingly difficult task of having to defend when he has not been given any tools, when he has been kept in the dark, when he has been given the proverbial mushroom treatment by the ministry.

If the ministry will not be candid, and the last thing in the world it has been is honest about this, then this whole exercise is revealed; as it was suggested at the onset, to be but a sham, a show trial if you will, something that is designed to create the impression of democracy and progress but is the precise antithesis of that, because it is all show, no go.

The government has an agenda that is written by the insurance industry. Clearly that is the case, because the insurance industry is so enthusiastic and the government's eagerness to get this bill passed betrays its real motives here. If the government does not release this information, then it certainly cannot make any claim to be sincerely participating in the committee process, in any consultation. They cannot make any claim to perceive their role as being part of a democratic process. What we have seen so far in this committee has been the most undemocratic process that one could ever imagine: spokesmen for the insurance industry sitting in the government seats of the committee with their majority, defeating each and every proposal to make the committee more effective.

The government had no intentions of having these committee hearings, and anybody who suggests that it did is not telling the truth, because the record illustrates that. The opposition parties had to fight tooth and nail to get committee hearings and then had to fight tooth and nail to get the short period of time that was available. Liberal members of this committee short-circuited the out-of-town hearings. They suppressed and rejected a motion to appear in two more cities where we in the opposition knew there were strong members of the community to make comments about the legislation.

So much for democracy. So much for this government's commitment to it. We certainly support this motion.

Mr Ferraro: Briefly, let me say to Mr Kormos that I am grateful for his comments and absolutely overwhelmed at his concern for my person. Having said that, let me just say that I think I get paid a little over \$9,000 as a parliamentary assistant and, quite frankly, to suggest that the minister has forced me into this position would be totally wrong.

Indeed I volunteered for this and I consider it part of my job, as it has been in the past of other parliamentary assistants dealing with other bills. The minister is available and will be available subsequently here and/or in the House to answer any and all concerns and I just want to say publicly that I appreciate the faith Mr Elston has shown in me.

Mr Philip: When we approach any piece of legislation, I guess the bottom line is two essential questions: One, what is the program that is being set up going to cost the taxpayer? Two, what are the benefits to the citizens?

The research that was tabled today does not deal with those two basic questions. We are told that it is going to cost \$143 million as a result of the subsidies to the insurance companies, but we do not know, and they have not even tabled the information, what the program is going to cost. On the public's or the consumers' side of it, we are told that the information is available as to what the premiums will be.

They are going to be higher than what the Premier (Mr Peterson) promised, that is, they are not going to be reduced but they are somewhere between 8 and 50 per cent. There is information that we can have in our possession that will tell us what, at least, the insurance industry sees as the savings, if any, or what the bottom line is going to be to the consumer. Now the government says it is not going to table that, and I say to you that it is a sham.

What good is it tabling this so late in the game, if it does not deal with the two essential questions? What are the taxpayers going to pay for this elaborate program set up by the Liberal government? What, if any, is it going to mean in terms of premiums to the person who is forced to obtain automobile insurance by law in order to drive in this province?

We have seen that this research tabled today is nothing but an end run around Mr Kruger and the Ontario Automobile Insurance Board—

The Chair: Are you speaking to Mr Runciman's motion as opposed to yours, which will follow?

Mr Philip: Yes, I am. He is asking for information which is not contained in this. Now, of course, by the absence of any really meaningful information on the most essential questions, the matter that was tabled today is an end run around this committee and certainly an abuse of the public as well as members of the committee.

I say to you that I will be supporting this motion. I think not only that we have a right to know, but that the public has a right to know the

bottom line. What is it going to cost them in taxes as a result of this legislation? What are they going to save, if anything, or what is it going to cost them in premiums after this legislation is passed, since the Liberals are determined to shove this through despite popular opinion against it?

Mr J. B. Nixon: I will try to be brief. I am concerned that this motion is completely out of order. The three House leaders representing each of the three parties agreed that this committee would have public hearings and engage in clause-by-clause review. We all agreed as a committee that we would pursue that mandate and we have been doing it. Now Mr Runciman wants to abrogate the agreement among the three House leaders. He wants to eliminate what we have done for the past four weeks, and it does not make sense to me. However, I defer to whatever the Clerk of the House decides in this matter.

1230

More important, the substance is that there is a bill out there that created the Ontario Automobile Insurance Board—and you remember that bill because you sat on the public hearings—and the filings that are being made are being made pursuant to that bill. Insurance companies are required according to that bill to file annually. They are doing it. They did it last year, they are doing it this year, one expects they will do it next year. That is another bill, another piece of legislation. It is an ongoing matter.

The process is confidential until the filings are in place because it is competitive information. As long as you have a competitive market, people should not be required to disclose prior to entering that market what their pricing will be. That is the nature of the marketplace. You are an advocate of the free market, Mr Runciman. You understand that, I hope, and support that.

The process is going on. There are tentative rates being filed by some companies, as I understand it. They are reviewed by the insurance commissioner, in this case the OAIB, and examined and accepted or rejected. The acceptance or rejection has not occurred, so all you have is tentative filing of some rates by some companies, and you want to hold a—pursuant to an entirely different bill that has been on the books of this province for nearly two years—suddenly you want to say, “Until I see those filings, I want the entire discussion on this bill to stop because I’m really the sultan of auto insurance and I should know this information because I want to thwart what’s been going on here.”

I notice we have the CBC here. “We want to get the CBC in here. Let them know—”

Mr Kormos: You’ve been lying about the premium increases.

Mr Runciman: Oh, mocking the CBC, are you.

Mr J. B. Nixon: You brought the motion. I find it a bizarre motion and not only is it out of order, but it is irrelevant to this piece of legislation. I urge all members of this committee not to support it.

The Chair: We will allow Mr Runciman a couple of minutes to wrap up. I have a point of clarification on Mr Nixon’s comments. The Clerk will not be deciding. The Chair will be deciding whether the motion is in order based on the advice of the Clerk.

Mr Philip: Wrong again.

Interjection: That was a slipup, a slip of the tongue.

Mr Runciman: I have a very brief response to Mr Nixon. I think that this is very much relevant. He is talking about Bill 2, but we are talking about the filings related to Bill 68 and that is the bill we are dealing with.

I want to say that it is extremely important because we have—I know this is strong language—delved in respect to insurance law and insurance policy in this province in the last two and a half years, and the trademarks have been deceit and deception. We have had a promise made by the Premier back in 1987. We have had a whole host of commitments, promises and statements made by subsequent ministers of financial institutions.

We now have this particular minister standing up when this legislation was tabled and subsequent to that saying that the consumers of this province are looking at rate increases of zero to eight per cent. He had this filing information initially at the end of December and complete filings by most insurance companies at the end of January, and now he is starting to muse publicly about 50 per cent increases. What was the minister basing his facts on back in October or September when he tabled that legislation and told the people of Ontario they were going to be facing maximum increases of only eight per cent? I think this is critical to the legislation we are dealing with.

For this Liberal rump on this committee, or whatever they want to call themselves, to tell us that it is not relevant and not important to the deliberations of this committee or the deliberations of the Legislature of Ontario that we know what this is going to cost us, while their minister

is out there telling the public it is going to cost them eight per cent and we are now getting rumblings of 50 per cent or more, I think is critical. It is critical to our deliberations and it is a critical factor in respect of this legislation.

What the government has been saying is, "We are going to stabilize rates or reduce them but at the same time we are going to lower your benefits, primarily on the backs of innocent accident victims." That is not what they are talking about, but here we are also looking at significant increases, if what the minister is saying is accurate, and I have to take it that it is because he has the information but he is not prepared to reveal it to us.

I want to say that if the government members on this committee are not prepared to support the supplying of that kind of critical information to the members of this committee, our own caucus, our own party representation on this committee, is going to have to take a very close look, following completion of public hearings, at whether we want to participate in clause-by-clause. It will be nothing but a sham. These hearings will have been nothing but a sham, as was predicted from the outset. There is no real effort to listen to the public.

Mr Solá: From your perspective.

Mr Kormos: From the public's perspective.

Mr Runciman: We have had overwhelming opposition to this and now we get into the position, at the last minute, where they are not prepared to supply us with the facts and what this is really going to cost the taxpayers of Ontario. It is unbelievable arrogance and we are not going to sit through the clause-by-clause process if this sort of thing continues.

The Chair: Again, I will just inform the committee that I will make a decision before we adjourn today with respect to whether the motion put forward by Mr Runciman is in order. Once that determination has been made, you look at two scenarios: one, either the motion is in order or, two, it is not in order. If it is in order, then there is a vote. If it is not in order, then the only other option is to challenge the ruling of the chair and that can be put through a vote as well. So we will come to that deliberation before we adjourn tonight. Mr Philip, you have a motion.

Mr Philip moves that all witnesses, persons and organizations who have expressed an intention of providing information and opinions to this committee be immediately advised by the clerk of the committee that the documentation tabled today by the ministry is in his possession and available for examination; that these witnesses

who have testified or are scheduled to testify be invited to advise the clerk that in the event that the new information received makes it necessary for them to provide additional testimony to that committee, they so advise and that having received requests for a reappearance, the Chair convene a meeting of the steering committee and propose a schedule for recall of those interested witnesses.

Mr Philip: We heard today that 38 out of the 39 studies were in fact in the possession of the ministry prior to the introduction of the legislation. We have had testimony by some expert witnesses from all fields concerned with this legislation and they have not been provided with the information on which they could comment, information that the ministry had in its possession and that one would assume was the justification for this bill in the first place.

We have seen that the information was even withheld from the Ontario Automobile Insurance Board, Mr Kruger and his associates, who had a task similar, supposedly, to the objectives of the government, namely to come down with some concrete proposals on the way in which insurance in this province can be regulated and handled.

Now Mr Nixon, no doubt, will try and make the same argument for this that he has made against Mr Runciman's motion, namely that the House leaders came to an agreement about certain dates of hearings for dealing with this bill. But when the House leaders, when the government agreed to it, screaming and pleading at the insistence of the opposition who said, "We are not going to be a part unless there are public hearings," when they agreed to these hearings, they had no idea that this government would withhold information as it has done, as we have seen in the last motion, about the essential cost to the taxpayers of this legislation and about the cost to the consumer in terms of premiums. We did not know that the major studies that they had done were going to be withheld until this date, until after many expert witnesses had appeared.

I think in fairness, therefore, that we allow those witnesses who wish to comment on this research that has been tabled today to have an opportunity to do so. Not to do so then is simply arrogance on the part of the government. It is arrogance against the people who have devoted a lot of time to preparing briefs and to whom government members have said, "Oh, if you only knew what we know, you would not come to those terrible conclusions that you have come to and you would not be so much against this legislation."

I say to you, allow Ralph Nader to look at this, allow him to comment; allow the lawyers in this province to comment; allow those people who represent the disabled and the brain-injured in this province to examine this research and comment; allow the consumers' association of Ontario to comment; allow the medical profession and chiropractors and the other healing professions to examine this and comment.

But do not table it in the last few hours of committee hearings and then say, "Well, tough luck, you have had your chance. We withheld this information and, therefore, anything you have to say you can't base on this. We're not going to give you an opportunity to tell not just members of the committee but, indeed, to tell members of the public how you feel about this research that was tabled today."

1240

If the government is sincere at all in having open hearings it can surely admit that some people—not all of the witnesses—may have something relevant to say based on this research, if this research is as important as it says it was. If their legislation is based on this research, if 38 out of the 39 reports were prepared prior to tabling the bill, then surely this research is germane to the proceedings of this committee and those groups that have had something to say about this legislation should have an opportunity to examine the research and to comment in light of that examination.

The Chair: The clerk has informed me that part of your motion is standing policy with respect to information and/or documents and witnesses filed with the committee. It is available for public viewing in the clerk's office during regular business hours.

The other aspect, in terms of notifying those individuals who have appeared before the committee, yes, that is different. But so that there is no misunderstanding, information that is filed with the committee as evidence that is given is available for public viewing in the clerk's office during regular business hours.

Mr Philip: That is taken for granted in the motion.

The Chair: I am just explaining that for the benefit of the viewing audience as well.

Mr Philip: I recognize that they are public documents that are available to the public. I simply want everybody who has appeared to be advised, because they may not all be eagerly watching their TV sets at this very moment to

find out that this information has finally been tabled. Just tell them that it is here.

The Chair: Correct.

Mr Kormos: Let's make something perfectly clear. There were public documents that were not available to the public before today, and the 38 out of 39 is not an inappropriate comment. The 39th document was prepared in January of 1990. Before that, the 38th document, the one last prepared, was prepared in July of 1989. Now Mr Ferraro, the member for Guelph, the parliamentary assistant to the Minister of Financial Institutions, told us this morning, in explanation for these not being made public, that the ministry was examining them for the purpose of preparing things like amendments.

Does the ministry not look at these before it prepares the bill? Thirty-eight out of 39 were available before the end of July of 1989, long before this bill was presented. The feeble—some would say it was other things—explanation given by the parliamentary assistant that the reason for not disclosing them before today was that they were being considered for the purpose of amendments to the legislation is just incredible. The obvious question to ask is: Do they not look at these before they prepare the legislation, before they prepare the bill?

One response could be, "Obviously not," because this bill has already been shown to have been so hastily thrown together, without thought about its real impact on real people, on victims out there in the community, that the only agenda that was being served was the auto insurance industry's agenda and its quest—which is about to be realized if this bill gets passed—for bigger and bigger and better and better profits. The fact that the government would not disclose, that it would conceal, evidence from the OAIB that the taxpayer paid millions of dollars for, goes beyond disgraceful and becomes deceitful, indeed becomes devious and a complete betrayal of any sense of democratic procedure.

It is just remarkable that this government would blow its horn time after time after time about consultation and yet be shown never to have consulted time after time after time, not just about this legislation but about a few of the more significant bills that have preceded it in the history of this particular government. That is really remarkable and will undoubtedly be remarked upon time after time after time.

The dishonesty about these reports has been prevalent in every response to every question about them. For it to be suggested by the parliamentary assistant that the reason for them

now being revealed is because they were still being studied is bald bull. It is a crock.

Mr Ferraro: Balls or bull?

Mr Kormos: It is bull, and it does not hold any water. It simply does not have any credibility to it whatsoever.

It is a lot of bull, and that has been the history, Mr Ferraro, of your government's presentation of this legislation. It surely was not the plan that the Premier had in mind back in September 1987, because he has been invited to tell us about that plan time after time after time after time. Surely this is not what he had in mind.

It obviously is not what was announced on 13 February 1989 by the auto insurance board when the public faced increases of 17 per cent to 82 per cent. It was an attempt to cover up, an attempt to pay back an auto insurance industry to which this government—and again, for the life of me, I do not know what the insurance industry has on this government. I do not know what they have on you that would put you in a position where they could force you to present this type of legislation. For the life of me, I cannot imagine what they are holding over your head, because surely it cannot be for the mere \$100,000-plus that the Liberal candidates got in the last provincial election. Surely to God, you cannot go down for that kind of money, as a party. That spells new lows.

Perhaps the time has come for the government and you Liberal members to come clean and tell us what they have on you. Let us help; maybe if we worked together we can solve that particular problem. But it remains that this committee has heard from a number of excellent persons appearing before it making submissions, among whom there is a wealth, a cornucopia, of expertise.

You and your minister and your members prefer not to listen to the likes of people like Ralph Nader, prefer not to listen to the likes of representation from the Canadian Bar Association, which has demonstrated a willingness to assist in the preparation of legislation for years and years now—again, at no charge to the public, no charge to you, no strings attached.

You would rather sit here and listen to the pat lines of the auto insurance industry, most of which concedes that its only source of information about this legislation is the stuff that the government has packaged up in its Ontario motorist protection plan's glossy green package that has given some marketing firm a few bucks in its pocket.

To boot, you have laid the scenario for some tinkering when we sit in the so-called clause-by-

clause. You have had in mind from the very beginning the prospect of tinkering around with the threshold and with the mere \$1,500 a month for long-term care that was displayed to be grossly inadequate from the word go, and then you are going to try to tell the people of the province of Ontario that you were responsive to representations made in your committee, when in fact what you have done is you have tried to dupe the people of Ontario. You have turned this committee process into a sham.

The minister made it quite clear that he wanted this bill passed before 21 December 1989. Once again I will tell you, and you know this to be the case: it was not a matter of merely a House leaders' meeting; it was a matter of the House leaders of the opposition parties demanding that the government participate in committee hearings. The government did not want to and it was dragged through them, kicking and screaming, because it knew it was going to have a hard time finding people out there, finding organizations, finding associations that were going to applaud or approve of this legislation.

And what it has done, notwithstanding that, is its very best, its feeble best, considering the lack of support there is out there in the community for this legislation. What it has done is try to bring as many people forward as it can, and all I say to you is: Is that as good as it gets; a bunch of insurance company hacks coming in here with incomplete, inappropriate and dishonest quotations purporting to have read Osborne?

1250

The Chair: I would caution you, Mr Kormos, with respect to calling into question the integrity of the witnesses, and ask you to speak to the motion moved by Mr Philip.

Mr Kormos: Listen, part of the process of sitting as a committee is the integrity of the witnesses, the credibility of witnesses, and let's take a look at the witnesses from this point of view. Some of the people here will know that one of the standard tests of credibility is, "Does the witness have anything to gain by his or her evidence?" I will tell you this: each and every one of the auto insurance witnesses who came before this committee had something to gain; they had incredible profits to gain.

Mr Velshi: You say so.

Mr Kormos: You know so. If you do not, you are missing the boat and your people will remember it come election time, pal.

The fact is that the insurance company witnesses had everything to gain by this legisla-

tion being passed. Their evidence is the least credible evidence; their evidence was the most self-serving evidence. Their evidence was designed to accompany those big ads in the Toronto papers.

I will tell you what is happening out in the community. The people in communities across Ontario are saying, "We are being had with this legislation," and you and your ministry people and the people sitting there as government members on this committee know that. The mere fact that the insurance industry would spend so much money on big Toronto daily newspaper ads is indicative of the fact that it was beginning to get very defensive and very concerned about whether or not this legislation was going to pass.

You know, as a result of contacts that your government and its administrative people have had in cities across Ontario, that people are becoming very, very sceptical. At first glance, people might have approved of some concept of reform of the auto insurance industry, but they are realizing this is the last thing we need in this province. This, Mr Velshi, is going to make big, big profits for the auto insurance industry and screw drivers and innocent victims across Ontario. The fact that you would not release this documentation so that it could be reviewed by persons prepared to comment on it before this committee is indicative of the fear that you have.

Once again I say to you, if the insurance industry is holding a gun to your head, tell us and maybe we can help resolve the difficulty. That type of blackmail is unacceptable to everybody in the province.

The government has been far less than honest since 1987, when the Premier lied about having a plan. He had no plan. It has been far less than honest through its parliamentary assistant when its parliamentary assistant justified the failure or the refusal to release these documents because the government was still considering them for the purpose of preparing amendments; it has been far less than honest about its real reasons for presenting this legislation.

It was not even honest when it came time for members of this committee, the Liberal members who are advocates of this legislation, to speak openly about the grease that they got from the private auto insurance industry, when it came down to the payoffs, during election time, to subsidize and finance their particular campaigns. Those people did not have the courage or the honesty to stand up and declare those potential conflicts at the onset of this; and the people in Ontario who watch and read about these could

use their own judgement about the validity of their Liberal contribution to this. This is a scam.

As a matter of fact, Mr Philip is doing a favour to the Liberals here. Some of you know that you are not likely to get re-elected in the next general election. Some of you, like Mike Ray, know that if you are going to retain any credibility with your constituents, you had better call a shovel a shovel and identify this as the bad legislation it is. Mr Philip is giving you an opportunity to lend some credibility to these hearings. Without this motion, these hearings are nothing but the most manipulated and manipulative sham, show trial and scam.

You are party to it. You and your Liberal colleagues are authors of it. You should be far more than ashamed of yourselves for succumbing to the threats and pressure of what I appreciate: that the insurance industry is a very powerful and wealthy industry. Why do you not show a little more guts, Mr Chairman?

The Chair: Thank you, Mr Kormos. I knew you could get your point across without being insulting and abusive and I appreciate that.

Mr Kormos: I did my best.

Mr Ferraro: I just want to clarify perhaps some confusion as a result of some of the comments made. There is no circumvention whatsoever of the fact that we had some of these documents indeed in the early parts of 1989. I want to point out again to the committee that in fact the first reading of the bill did not occur until 23 October 1989, and I am sure Mr Kormos and others would be aware of the fact that prior to that it would entail a cabinet decision, in fact, quite close to that date.

So I think it would have to be a given that if indeed these 39 documents—bearing in mind that the opposition and others thought there were 23 or 27—were compiled in order to assist in the preparation of a submission for cabinet, at the very least they could not have been made available until the end of October. I think that is a given.

Unfortunately, the opposition has not accepted the explanation, and that is its right. But the reality—the bold facts, if not the bald facts—is that the documents were used for consideration by cabinet, I reiterate, in the preparation of regulations and/or in the preparation of such things as the optional benefits insurance and so forth. Indeed, I regret that they could not have been made available earlier, but they were made available as quickly as possible and with a summary which we feel is necessary.

Finally, quite frankly, I apologize for being repetitive. I think the fact that we have released all 39 of the documents is somewhat unique in the parliamentary process, in legislation of this type, as far as any government is concerned.

Mr J. B. Nixon: I am concerned that the discussion at this committee has reached an all-time low. When I was elected and, I think, like most members when they were elected, I never expected that the substantive debate on a bill would be simply ad hominem personal attacks, misrepresentation of persons, individuals, abuse of witnesses, misrepresentation on all accounts of all other persons' points of view by the opposition members when it suited their purposes. I find that very, very troubling.

I think the public at large somehow lose interest in the substance of the bill and perhaps in democratic representation when all they see and hear on television is people calling people names, imputing motives, attacking people's integrity, whether they be witnesses, members of the committee or elected representatives of a government.

I think it is very, very unfortunate, I think it is wrong, I think it is demeaning to the process and to every individual who is involved and I find that very upsetting. Having said that, I do want to make a couple of comments on the motion.

My understanding is that there are 39 documents before the committee. For quite some time, some of the opposition members have been alleging that the government did no independent investigation but simply rejected Kruger and the OAIB, Osborne and so on and so forth, which has been proven patently false.

Mr Kormos: It is true. There's nothing in it.

Mr J. B. Nixon: Most of Osborne and the OAIB has been adopted in this bill. But in any event, they kept saying there is nothing there; they do not have anything. Finally, they have got it, but they have not read it.

No one here can say he has read the material, and yet they have come to quick conclusions, quick to seize a headline, quick quotes which will attract everyone's attention, quickly condemning the government. But they have not read the material, they do not know what is there. They will pick pieces out for their own partisan purposes, but the substantive interest in these issues is not being discussed at all.

1300

Now they have got the information and they say, "My goodness, what's the government been doing?" Well, the government has been working

for a long time developing this bill, as I understand it. You cannot have it both ways. Either the government did the work or it did not do the work. They said the government did not do the work. The government said: "Here's the work. We did it. Take a look at it." Now, without reading it, they condemn it entirely. Look at the source of some of the documents. These are not all government-generated documents.

Mr Kormos: Yes, the Insurance Bureau of Canada.

Mr J. B. Nixon: These are documents produced by the IBC, by the FAIR committee. Some of them were before the Ontario Automobile Insurance Board and some were independently commissioned by the government. None of these gentlemen, if I may call them so, sitting on the opposite side bothered to ask the lawyers when they were here, "Did you do an actuarial study?" Because if they had, the lawyers would have said, "Why, yes, indeed we did, and here it is." They did not think to ask. They did not think to ask the IBC, they did not think to ask Kruger, but somehow, at some point—I do not know how these things happen; it is like a drama reaching its climactic moment—they put it all together, spin together a web of gossamer that suggests there is a conspiracy out there. There is none.

Mr Kormos: It is easy for you to say.

Mr J. B. Nixon: I suggest everyone read the documents and then we can have a discussion. We could start this afternoon if we wanted. In any event, for the same reasons I have said to you on Mr Runciman's motion, I believe this motion is out of order. We have got work to do; we should be getting on with that work.

Mr Kormos: You are the one who did not want to.

Mr J. B. Nixon: If these gentlemen are not interested in doing that work, are not interested in hearing from members of the public, say so. There are a lot of people who have put in a lot of time and effort to come here and express their views. I have heard some constructive criticism, I have heard some commentary, some of which I may not agree with, some I may agree with, but that is part of the public hearings process, and I think it has been very, very valuable. If they do not think it has been valuable, that is their personal decision, but to suggest that all of us agree with them and must accept their views is not my idea of democracy. I will certainly let you know right now that Mr Kormos, Mr Philip and Mr Runciman do not speak for me.

Mr Kormos: I would not purport to speak for you because you speak for the insurance companies.

Mr J. B. Nixon: And I suggest to you that they do not speak for the public. That is what really concerns me.

Mr Philip: Why should I speak for you when the insurance companies are your ventriloquist?

Mr J. B. Nixon: So I am urging all members of this committee not to support this resolution.

Mr Kormos: Spend your money wisely, Nixon.

Mr Runciman: I did agree with one thing that Mr Nixon said, and that is with respect to people becoming disillusioned with politicians and governments in general. I do not think it is because of some of the strong positions taken by opposition members like myself and Mr Kormos. I think it is essentially—

Interjection.

Mr Runciman: You disagree. I am saying I think it is essentially because of the kinds of deceptions that we have seen with respect to auto insurance for the past two and a half years and the kind of situation where Mr Ferraro has tried to be an apologist for the government with respect to this documentation and these materials, suggesting that they were kept out of the hands of the committee because they were needed for cabinet scrutiny and cabinet consideration of amendments. This is when the bill was tabled in October, and what he is suggesting is that this material could not be available in December when we first met because once the cabinet dealt with this, that in October, November and December it was already considering amendments. Come on, that strains credibility.

We have also had the minister standing up on numerous occasions saying, "Zero to eight per cent with this legislation." Now we have the facts revealed today. There has been no analysis of the impact of the no-fault threshold as embodied in Bill 68. Again, what are members of the public supposed to think when we have a minister of the crown getting up very adamantly and saying, "This is the way it's going to be," and then, once he gets the information filed in his hands and in the hands of the insurance board, starts publicly musing about the possibility of 50 per cent increases. Then we are supposed to remain quiet, we are not supposed to be very much concerned about this minister taking a very strong public stand that consumers are going to be faced with maximums of eight per cent? Now they could be significantly higher and he is not prepared to

release that information to this committee until after the bill becomes law.

I think if the public has concerns, and it does indeed, it is because of these kinds of actions, these kinds of activities, the irresponsible promise made by the Premier in 1987, which has been described in some unkind but I think accurate language, when he said he had a specific plan to lower auto insurance rates and he had no such plan. With respect to this information being released, the government apologist has again said how wonderful we are to release this, but I want to say it followed one day after I had filed under the Freedom of Information and Protection of Privacy Act to have this information made public. The day after I filed, the parliamentary assistant informed us that they were going to make this information release.

Interjection.

Mr Runciman: That is accurate. If you disagree with that, if that was not the case, let us hear. I filed that application. The next day you said the information was going to be made available. So for you to sit here—

Interjection.

Mr Runciman: You can give an opinion, and you will have an opportunity to respond if you wish. I am saying that to suggest that you have been so generous to this committee and to the public of Ontario with respect to making this information available is laughable, to say the least.

I am not sure how helpful this information is going to be, but I think that we have to have an opportunity for experts like Professor Jack Carr, an economist, to review this information and look at some of the shortcomings. There are certainly some serious concerns just when you look at the range of opinions by actuaries. We have someone like Mercer saying the benefit of this program is only going to be perhaps seven per cent, and that is without factoring in the tax and OHIP breaks, it is without factoring in the tort reform. At the same time we have the minister, who has these varying actuarial studies before him without looking at the specifics of the plan brought in with Bill 68, having the gall to stand up on the public platform and say, "You're looking at zero to eight per cent," when he has actuarial studies, dealing with other plans which are somewhat comparable, that are saying quite different things altogether. I mean, you can obviously, for political purposes, grasp the one that is going to deliver the best political message. But that is shortsighted to say the least, and I think that is going to come back to haunt the

government. It is starting to haunt them right now when they are having the filings of insurance companies before them which indicate very substantial increases indeed, much beyond the eight per cent.

We have the stonewalling effort here today, which apparently is going to continue, to refuse not only to provide opportunities for expert witnesses to review this material and reappear before this committee, but also to provide this committee with the exact facts with respect to what this is going to cost consumers of the province. I hark back again to what Mr Nixon said; I think that the people of this province, the people of the country probably, are becoming disillusioned with politics and politicians. It is not because opposition members take tough stands.

Mrs LeBourdais: I wonder why.

Mr Kormos: Why? Because they know you are in the back pockets of the insurance industry. They know better.

Mr Runciman: It is because governments continue to deceive the public like this government has done on auto insurance.

Mr Ferraro: Without any editorial comment, which of course I cannot do, I think the impression just given by Mr Runciman, that the information was released as a result of his filing a freedom-of-information request yesterday—I think Mr Runciman would have to agree, and it can be substantiated by Hansard, to two things. One is that in my opening comments before the hearing started, I indicated we would be releasing material. I think, with great respect, that Hansard would indicate that it was, I think, well over a week ago that we indicated that 6 February would be the day we would be releasing the documentation and indeed that there was a request if we could get it earlier. I made a commitment to the chair. I just want to clarify that.

Mr Runciman: It was the day after I filed my request, that is all I am saying.

Mr Philip: This bill went through cabinet some time in October and then on 23 October it was tabled in the House. We are told by Mr Ferraro this morning that all of the documents that have been tabled, with the exception of one, 38 out of 39 documents, were known to the cabinet, were known to the ministry certainly, before they would have passed the bill through cabinet and introduced it in the House on 23 October. The argument given now by Mr Ferraro

for the delay in tabling this information is that the cabinet had to consider amendments.

Mr Ferraro: And regulations.

Mr Philip: And regulations. But surely the role of public hearings is to consider amendments, the role of this committee is to consider possible amendments in the cases where legislation is at all redeemable, and it is questionable as to whether this is or not. Members of the public have a right when they are coming forward, as many of them have and suggested amendments, to have the same database, the same information, the same research on which the government is considering its amendments. Instead, this has been withheld from the public, from the very knowledgeable interest groups that have appeared before us, until 6 February.

One has to say, what is the charade of having public hearings if you do not release the information on which legislation is being based so that we can have fair and reasonable and balanced comment from those who have an interest in the legislation? Since the government has failed to do that, all that this motion does is request that those people who feel they have something new to add as a result of this information which has not been tabled until today be given an opportunity to make their views known. My motion does not open up to new witnesses. All it says is that those people who had an opportunity and have registered to appear before this committee will have an opportunity, if they so desire. Not all of them will take that opportunity, I am sure, but those who, having read this information, wish to either change their point of view or add some new information will have an opportunity to do so.

If this legislation is as good as the government would lead one to believe it is, then it should welcome this, then surely the documentation tabled today will prove the government's point. Surely, then, the rhetoric of the Liberal members, that some of the witnesses were just misinformed and if they knew what the government knew, presumably this information which the government had in its possession when it passed this bill through cabinet and introduced it on 23 October—surely if they have this information they will be supportive of the bill. All that we are saying now is put up or shut up. You have now tabled your research. Why not give the public, which has not had an opportunity, an opportunity to examine it, and make its views known on the research? If this is the justification for your legislation, what are you afraid of, to allow the public and the various groups to

comment on the authenticity and on the validity of that research?

Mr Kormos: The insurance industry told them not to.

Mr Philip: I do not know why any Liberal member or any member of the committee would vote against this. It is simply fulfilling our mandate as a committee of getting the maximum amount of information as possible on which to make our decisions. I am deeply disappointed. I can only suspect that the government has deliberately withheld this until late in the hearings so that those knowledgeable groups that have appeared will not have an opportunity to publicly comment on the research on which the legislation was based.

I call for the vote.

The Chair: I am going to assume—I am not even going to question—that it is going to be a recorded vote.

The committee divided on Mr Philip's motion, which was negated on the following vote:

Ayes

Kormos, Philip, Runciman.

Nayes

LeBourdais, McClelland, Nixon, J. B., Oddie Munro, Sola, Velshi.

Ayes 3; nays 6.

The Chair: Before we adjourn until two o'clock, if you remember, we have surrendered room 151 on 14 February in the afternoon to the standing committee on the administration of justice because it has a need for translation. We have had a request from the standing committee on resources development, which is considering Bill 208, to surrender the morning—they are going to have to work out with the justice committee whether they are going to get the afternoon; they expect a large delegation in on the morning of 14 February—so that they are able to broadcast the proceedings to another room where they will handle the overflow. Unless I hear any objections, I will instruct the clerk to try to make arrangements so that the room that we have on 14 February in the afternoon is available to us in the morning.

Mr Runciman: We are most agreeable folks.

Mr Kormos: That's St Valentine's day.

The Chair: The committee stands adjourned until two o'clock.

The committee recessed at 1315.

AFTERNOON SITTING

The committee resumed at 1404 in room 151.

The Chair: I will recognize a quorum and welcome to the committee the Institute of Chartered Accountants of Ontario. I have Mr Walker, Mr Wilson, Mr Cameron and Mr Harper, if you gentlemen would like to come forward. The clerk has circulated copies of your presentation.

We have approximately half an hour. I can probably assure you that some of the members are still grabbing a quick sandwich in their office and are viewing this in the office. We will pick up most of the members before your presentation is over. If you can leave some time for some questions, comments and discussion, we would appreciate that as well. For the benefit of Hansard and the television audience, identify yourselves and then please proceed.

INSTITUTE OF CHARTERED
ACCOUNTANTS OF ONTARIO

Mr Walker: Certainly. My name is Ross Walker. I am president of the Institute of Chartered Accountants of Ontario. On my right is Bill Harper. Mr Harper is director of professional and technical services at the institute. On my left is Bob Cameron, chairman of the financial institutions committee, and to Bob's left is David Wilson, executive director of the Institute of Chartered Accountants of Ontario.

I believe we will be relatively brief, depending upon the number of questions you might have. We appreciate very much the opportunity to participate in the process of finalizing Bill 68. We sent a letter to you setting out the thrust of our proposals. If you would like, I would be happy to quickly give an overview of those things without going into all the detail that is in the letter. It is not a very long letter, but nevertheless I will indicate a few things that I would like to draw your attention to and then, as you said, we would be happy to respond to any questions you might have.

The first observation we had, after acknowledging our appreciation for being allowed to participate in the process, was the concern with respect to the provision that rules governing the preparation of financial statements are to be set out in the regulations. We support a proposal to establish a set of rules governing the financial statement preparation, but we believe that the overall framework and guidance for such financial statements should be using generally accept-

ed accounting principles, which as indicated earlier in the letter are the standards we follow.

Our concern here is that the rules in determining the regulations would often not be as comprehensive as would be required. We believe that as generally accepted accounting principles are undergoing constant review and revision by all the appropriates, generally accepted accounting principles referred to in the act would be the way to go rather than putting reference to GAAP in the regulations. This would be consistent with the Loan and Trust Corporations Act, 1987, which is a current model we would recommend to you.

I can speak to that issue or respond to questions on that issue, if you like, or perhaps I could summarize the other comments and then get to any general questions. Let's do it that way.

The next item we referred to is our view that there needs to be a definition of an "auditor." The terms "accountant" and "auditor" are widely used and in different contexts, sometimes interchangeably, sometimes not interchangeably, and we believe it would be useful to have a statutory definition of both terms. We recommend that the term "auditor" be defined in the same way as "accountant."

With respect to auditing standards, we believe that the appropriate basis for the preparation of the auditor's report is generally accepted auditing standards. The generally accepted auditing standards provide a comprehensive set of rules that the auditor is familiar with and knows what is to be followed. It results from an organized process of consultation with users of financial statements and audit reports and the various constituencies.

We believe that the auditor's report should be prepared in accordance with generally accepted auditing standards and the requirements of the superintendent, because we realize there may be specific requirements of the superintendent that would not be in generally accepted auditing standards and requiring both would cover the requirements of the superintendent as well as the requirements of our profession.

Last, we believe that the reference to the auditor to report a breach in the act needs some consideration. It is indicated in the proposed subsection 410(1) of the act that the auditor should report promptly to the insurer and the superintendent any breach of the act of which the auditor is aware. We believe that the intent of this section is that the auditor report matters that

come to the attention of the auditor in the ordinary course of his duties as an auditor, as distinct from requiring an auditor to conduct a separate investigation to identify breaches of the act. As I am sure you would be aware, if the auditor were obliged to give some assurance to the superintendent that there were no breaches of the act, it would be a very costly endeavour and much beyond the willingness, I am sure, of the clients to fund.

Therefore, we feel that, similar to the Loan and Trust Corporations Act, there should be a requirement that the auditor report any breach of the act which comes to the auditor's attention during the ordinary course of the duty of the auditor.

Those are the observations we had with respect to the bill. As I said, we would be happy to respond to any questions members may have.

1410

Ms Oddie Munro: I think your suggestions are certainly very sound ones, if that is accounting terminology. I just want a point of clarification from the parliamentary assistant. Is it normal procedure to add or to include these kinds of recommendations in regulations, and if so, had you considered doing it?

Mr Ferraro: I can say without question that many of the suggestions are indeed welcome suggestions. The delegation, in the presentation, mentioned the interaction within the ministry and alluded a number of times to similarities, perhaps, that could be drawn with the Loan and Trust Corporations Act. I should tell the committee and the delegation that many of the same individuals who prepared that act—I sat on the committee, as Mr Wilson probably knows, that passed that act in 1987—are preparing this one.

Perhaps I may in conclusion just say that they are welcome suggestions and that the ministry will certainly address these points made today. Hopefully, there will be some interaction with the chartered accountants' association.

Mr Philip: Pardon me. We only had about 25 minutes for lunch because of some other activities this morning. I had a meeting in that as well, so I apologize for being late.

The definition of "auditor" as "a person licensed under the Public Accountancy Act": that would include chartered accountants as well as all other recognized professional accountants in Ontario, would it?

Mr Walker: It may or may not. It depends upon whether they have a licence under the

Public Accountancy Act. There are non-CAs who have licences under the act, but not many.

Mr Philip: As you know, there is some effort to expand the professional services or certification or whatever you want to call it of various methods of accounting, or various routes, I guess, to become an accountant in the province. I have some sympathy for that, considering that our Provincial Auditor sees no great difference in capabilities, depending on which route you take to acquire your accounting and auditing skills. I just wanted to make sure that your suggestion is not to be restricted to simply CAs. Maybe you can clarify. Maybe I am mixing up two different issues.

Mr Walker: The impact of our proposal is that those who are qualified under the Public Accountancy Act would be those who could perform the engagement. As you mention, there are current discussions with the Attorney General (Mr Scott) and others with respect to broadening the ability to get a public accountant's licence. But our point is that regardless of the rules of how you get there, that should be the act that should govern the people who are eligible to act as auditor.

Mr Philip: Is it safe to say, though, that what you are advocating is that most certified general accountants would not be allowed, then, to practise, and that therefore you are asking for some exclusion or, if you want, closed shop to members of your particular association?

Mr Walker: Really what we are saying is that the government will have to decide what kind of Public Accountancy Act it wants and who is eligible to be a public accountant. Once they have decided that, it is those people who will be able to qualify for this act. There is some possibility that the ability to get a public accountant's licence will be broadened to include more people, but that will be for the Ontario government ultimately to decide, as to what type of legislation it wants. But you are correct in a sense that there are not many people who are not chartered accountants now who are eligible under that act.

Mr Philip: I guess my only concern is that if we are dealing with legislation, if the government has announced that it is going to eventually, after long years of promises, broaden, if you want, the profession, then I think we should be very careful not to put restrictions with another piece of legislation. I guess that is my worry.

Mr Wilson: I think we are very comfortable with your saying that latter point and that is why we have chosen the reference to the Public

Accountancy Act. That is the act which when full attention is given to the subject will resolve whether there should be any changes in access to licensing. By using that reference as the standard reference two things are achieved: those people who are entrusted with a licence now to protect the public are the only ones who can do it, and should there be any changes in that legislation, immediately it would apply to whoever is affected by the change, so this is an orderly piece of business from every point of view, from both acts' point of view.

Mr Philip: You would make a good lawyer. I think you have made your point quite well.

The Chair: Thank you very much for your presentation. We appreciate it.

Mr Philip: You will notice I said "a good lawyer"; I did not say "a lawyer," so that was a compliment.

The Chair: There may or may not be a slight difference. Thank you very much, gentlemen.

Mr Wilson: I must say for the record that I am a chartered accountant, not a lawyer.

Mr Philip: So is Doug Archer and he is a good guy.

The Chair: James Hoare: for committee members, the next individual was exhibit 106 in your material. We may have a few additional copies if you do not have exhibit 106 with you. For the next 15 minutes the committee time is yours. The clerk has circulated and is circulating additional copies of your presentation. If in that 15 minutes you could leave some time for some questions and comments, we would appreciate it. Please identify yourself for the benefit of Hansard and the television audience and then proceed.

JAMES B. HOARE

Mr Hoare: My name is Jim Hoare. I reside and work in London, Ontario. I am a chartered accountant and a chartered business valuator. The majority of my practice is restricted to the calculation of loss of income and business profits, specifically relating to personal injury accidents, business situations, marital disputes and business interruption insurance claims.

My remarks with respect to the Ontario motorist protection plan are brief. I am going to restrict them to areas I feel I have some expertise in. Specifically, I would like to speak to the issue of the income replacement provisions of the proposed legislation, where loss of income is restricted to 80 per cent of the lost income

maximum, \$450, and the requirement to deduct sick leave credits and disability benefits.

1420

In my opinion, those provisions are inadequate, specifically relating to small business people, owners and managers of businesses. In my experience they find it quite difficult and have some difficulty determining what their total loss of income would be. As a result, if they feel that the \$450 of income replacement under the Ontario motorist protection plan is not adequate, I realize they are able to go out and top up their insurance. Unfortunately, this adds additional costs. As well, it becomes very difficult for them to determine just how much they should top up their insurance by.

It is very difficult for them in that when they are in an accident which has resulted in a loss, under the proposed legislation they may be able to collect \$450 a week, which may or may not represent their total loss of income. However, their business may be affected in the long term. It is my understanding of the legislation that there is no provision in there to try to protect against such situations occurring.

In my review of the legislation, I also looked at the Coulter Osborne report and the Kruger commission and I am basically in agreement with a number of the provisions in those documents with respect to income replacement.

It seems reasonable to me that a no-fault system may be appropriate, with the provision that victims of car accidents will be able to realize their full economic loss either through the legislation or through the court system.

The only other point I would like to make today is with respect to the \$450 maximum. It seems to me that should be indexed in order to protect against inflation in the future.

The Chair: Thank you. I have Mr Ferraro on a point of clarification, Mr Philip and Mr Kormos.

Mr Ferraro: Just as a minor point to Mr Hoare, if indeed the collective agreement, assuming there is one, allows for the employee to have the option of taking his sick benefits or leaving them as they are and going right to the no-fault benefits, the 80 per cent, the \$450, with the top-up, that is allowable. In the first draft it was not, but in the second draft we made that change.

Mr Hoare: Fine.

The Chair: I have either Mr Kormos or Mr Philip for up to five minutes.

Mr Philip: I think what I hear you advocating is the British Columbia plan of insurance. I can

understand why you might be sympathetic towards that kind of system, as I am.

One of the questions I want to ask you is this: As an accountant, I am sure you have dealt with clients who have been in automobile accidents and who are faced with losing their businesses. Under the present system, if they are not happy with what is offered on a weekly basis, then they have the option of suing. From your experience with your clients, do they usually obtain through the courts considerably more than \$450 a week?

Mr Hoare: In the circumstances in which it was merited, that they in fact were earning more than \$450 a week, then yes, they do recover that economic loss.

Mr Philip: I have had the point put to me by small business people, particularly in my riding, that \$450 a week will mean they are forced into bankruptcy. In your professional work, in working with small business, would you say this act is likely to create the bankruptcy or the phasing out or the termination of a number of small businesses in those instances where the owner-operator is incapacitated for a period of perhaps more than six months?

Mr Hoare: It certainly is possible. I think the statement you made is fairly general in nature, but my experience has indicated that in a small owner-operated business the owner is normally very key to the operation, and if you remove him from the operation of the business for whatever reason, that business is subject to failure.

The Chair: Mr Kormos for two minutes.

Mr Kormos: We have often illustrated the impact of this legislation on small business people. When I talk about small business people, I am talking about the entrepreneur, the man or woman who runs a shop or runs a little service centre or whatever type, employs two or three people, maybe more. None the less, as you describe, they are not absentee business people; they have to be in there. They are not working eight-hour days. They are working 12-, 16-hour days, not five days a week but six and seven days a week.

But the impact on a small business person of, let's say, a drunk driver hitting him at a crosswalk and breaking both his legs would deny him the opportunity to work in that business on a daily basis and could perhaps cause the business to lose its clientele, lose its customers. He could be forced into bankruptcy and the result could be, let's say, a five-year period of time when that young or whatever entrepreneur has to work to build that business back up to where it was.

Small business people would get no compensation if it were merely broken legs. They would get no compensation for pain and suffering. They would not be able to sue the drunk driver for pain and suffering. They would not be able to go after the guy who caused the injury. They would get no compensation for the bankruptcy and the loss of business potential and they would not be compensated for their diminished earnings over, let's say, the five years that it took them to build that business back up to where it was. They might get some of that \$450-a-week income replacement.

Mr Hoare: If they could establish that they—

Mr Kormos: That is right. You have probably dealt with this in disputes about business income, perhaps in marital disputes—

Mr Hoare: Oh, yes.

Mr Kormos: —because your draw of \$200 a week is not uncommon. What you are doing is routing revenue and profits back into the business. So you have an artificially low income but the adversary, be it a spouse who is irate or what have you, will want to seize on the lower figure if it is to his or her advantage. I suspect you could see insurance companies doing that even when it came time to pay out the no-faults.

Mr Hoare: That is possible. I do not have any direct experience with respect to that, but that is possible.

Ms Oddie Munro: I am just looking at your comment on the fact that you worry that some small business people would not be adequately advised as to the need for disability insurance. In the bill, I understand there are regulatory provisions both through the commission and through that to the brokers themselves to be in a position to give the consumer additional information. Notwithstanding that, I am wondering what kind of information you would specifically require.

Mr Hoare: The analogy I draw is: Although it is common in the business community that you should protect yourself with business interruption insurance and any financial adviser will tell you that, in my experience I see many cases where small business people just do not do that. People do not protect themselves because they have not taken the time or they have not inquired of their professional advisers or they may not have any professional advisers.

I just feel that this may be another situation and maybe more devastating than the business interruption situation, because probably your chances of being in a car accident are more than

the chances of your factory burning down. It is going to be a bigger risk that small business people are going to have to take.

Ms Oddie Munro: I think your suggestion is a good one, and certainly it is my understanding that the intent in strengthening the consumer education regulations was to ensure that small businesses do in fact receive well-written information on the options available.

Mr Hoare: That is correct. The other problem that I see, though, is that a small business person, unlike an employed person, will have difficulty in determining how much more insurance he needs to top up to protect himself. It is very easy for an employed person to do that. They know how much they make and they know how much maybe their insurance from their employer provides. But a small business person's profits can go up, can go down. They can draw money out in different forms other than pure income.

1430

The Chair: I have Mr Ferraro just on a point of clarification.

Mr Ferraro: I hope it is a point of clarification. I may have something confused here. There is no requirement in the act for brokers to tell the insureds, their clients, that there is optional insurance per se. I think it would be a case of normal good business practice. The requirement that may be a little confusing to some people is that if, upon request, the insured or the customer asks the broker, "What lines do you carry and what companies?" the broker would then have to disclose that information.

There is also an argument, just in conclusion, that brokers would be not only not following good business practice if they did not indicate other options, but indeed they may be susceptible to a lawsuit if they do not.

Mr Philip: I thought this was legislation to save them money.

Mr Kormos: The right to sue? Mr Ferraro.

Mr Ferraro: It is just an argument in that respect.

The Chair: Thank you very much for your presentation.

Do we have Douglas Chrepyk or Ed Wadley in the audience? Were you waiting for Mr Chrepyk?

Mr Wadley: I do not believe he is coming today.

The Chair: Okay, that is great. Do you have anything for the clerk to distribute in terms of copies of your presentation?

Mr Wadley: I believe it has been distributed, something handwritten.

The Chair: The clerk may have it here, so if you will just bear with us for a second, we will see that it gets distributed. We have 15 minutes. If in that 15 minutes you could leave some time for some questions, comments and discussion, the committee would appreciate it. Please identify yourself for the benefit of Hansard as well as the television audience and then proceed.

ED WADLEY

Mr Wadley: I am Ed Wadley. I am 38 years old, and I have been in a wheelchair since 1975. Two days before Christmas in that year, I was driving home from work in the middle of the afternoon. I fell asleep at the wheel and I ran into a transport truck. There were no drugs or alcohol involved; however, it was my fault. I just simply fell asleep at the wheel. As a result of the accident, along with a punctured lung, a broken wrist, a broken nose and a smashed ankle, I severed my spinal cord, which is why I am in the chair today. That rendered me quadriplegic.

Quadriplegia, for your benefit, means that all four limbs are affected, not necessarily totally. I can move my arms to a certain extent but I cannot move my legs at all. I am basically totally paralysed from about here down and I have no sensation from about here down. You will also probably notice that my hands are kind of clasped in a fist, which is the way I want them. I have no voluntary movement of my fingers. I keep them in a fist so that I can put a pen in between my fingers so that it will stay, or cutlery or something like that. My hands being like this helps me to grab things and hold on to things.

Quadriplegia means I need help with a lot of things, mostly, however, physical and architectural. I think I have got emotional things taken care of, but I do need help with certain physical aspects of my life. I will explain that a bit. I need help getting up in the morning, going to bed, getting my clothes on, getting transferred into a shower, transferred on and off a toilet, those kinds of physical things. Architectural are things like ramps, elevators, doors being widened. Anything along those lines that the existing architecture would not permit I need help with, either financially or just getting it done.

The disability and the accident also meant that I would not be working for a while. At that time, in 1975, I was not sure I would ever be working again. I did not know what my capabilities would be. After three months in intensive care and six months more on an active treatment floor in a

hospital in London, Ontario, I left the hospital there to go to another hospital in Toronto here called Lyndhurst and endured three more years of rehabilitation. So that was about four years in the hospital that I spent.

That brings us up to 1980, which is when I left Lyndhurst, and once I had left there, I moved into an apartment not far from Queen's Park here. After that I began working at a number of jobs, some permanent, some part-time, some full-time and some temporary.

What I would like to leave with the committee is the exorbitant cost of being disabled. This thing, for example, this chair, I do not know whether you know, but these chairs cost about \$6,000 each. It is an electric chair. There are some government programs I can make use of, such as the assistive devices program; however that only covers three quarters of the cost of the \$6,000. I am expected to take care of the other one quarter. I sit on a cushion, a regular cushion with a little bit of gel in it. That costs \$450. Again, I would be expected to cover one quarter of that.

I recently purchased a van. The van is something I would be expected to cover on my own anyway. That is \$19,000 or \$20,000. The conversion of the van is another \$17,000 or \$18,000 right there, and I do not qualify for any help financially to cover that. The van has to have a floor lowered, it has to have a ramp, it has to have automatic sliding doors, X number of things that all cost money.

One other thing that is almost a hidden cost which I think you should be aware of is transportation. People tend to think that services like Wheel-Trans cover all the needs of people who are disabled. Sadly, they do not. About one in four rides that I request of Wheel-Trans is refused. That means that if I called Wheel-Trans to get down here today to speak to you and they did not accept my ride or refused my ride, they would say, "We can't take you." I would be forced to take a private transportation service. That would cost me, to get from my work at Yonge and St Clair down to here, about \$15, and another \$15 return.

I also want to tell you that were it not for the money that I have been receiving from my car insurance benefits, a lot of these costs that I have been incurring I would not have been able to absorb.

I guess what I would like to do now is just let you ask questions of me. If you need further clarification about my disability, what I can and

cannot do, the challenges I have, please ask. I will leave it up to you.

The Chair: Mr Kormos, Mr Runciman and Mr Nixon for up to three minutes.

Mr Kormos: I guess a special thanks for coming because of the extra difficulty, perhaps even a little bit getting into this building, because although some good efforts have been made, it is still obviously not without difficulty. The revolution regarding access for the disabled has not happened yet.

Mr Wadley: We are still in the transition period.

Mr Kormos: The passion is there, but the revolution just has not happened. I do not think there has been the responsiveness that there could be.

One of the debates here, one of the arguments, is that the government bill would take away the right of—the impression one gets is that you could not be characterized as an innocent victim of another bad driver.

Mr Wadley: No. It was my fault entirely.

Mr Kormos: Fair enough. We in the opposition have insisted—first, the no-fault benefits, which I trust is what you are talking about now in terms of what the insurers have been providing you with. You have been receiving them long enough from when they were even more pathetic than what they are now, when they were less—

Mr Wadley: It was a percentage of my income, and at that time it was pathetic. My income was.

Mr Kormos: That is right. The maximum that you received was pathetic, and it is now.

Mr Wadley: Yes.

Mr Kormos: Obviously those no-faults for people like yourself have to be improved to reflect the realities of 1990. Obviously they have to be indexed so that people do not become victims of an obsolete figure.

1440

Then again, in any society, to think that we would let any person suffering medical difficulties, that we would expect him to live without availability or access to treatment or rehabilitation, regardless of who he is and why he is disabled—we had a young guy here, again spinal cord injury, it was not even a motor vehicle accident, it was a swimming pool, and he had no difficulty agreeing.

Our position is that no-fault should be capable of providing for accident victims, regardless of who caused the accident, but we also agree that

innocent victims of bad drivers—and again, you have been fair in saying you are not one, you are not the innocent victim of another driver, of a bad driver—be they kids, adults, women, men, old people, young people, should be able to seek out compensation, for instance, for pain and suffering, for loss of enjoyment of life.

It sounds unfair from some points of view that persons who are not victims should not be able to do that. But we say no, they should have competent and strong, capable no-fault benefits, which should be—

Mr Wadley: It certainly was not a meaningful act on my part. I mean, it was an accident. I hope your sense of—

Mr Kormos: An accident, quite right, it was not meaningful. We agree most are not meaningful. What do you say, though, about the right of innocent victims, or of anybody, quite frankly, to be compensated for pain and suffering and loss of enjoyment of life?

Mr Wadley: Are you asking that of me?

Mr Kormos: Yes.

Mr Wadley: From what I understand of what I have been given to read about this, there will be some provision for individuals who are ascertained to be completely and totally disabled. There will be a \$500,000 lump sum which I was not able to partake in but I would be able to were I to be injured now.

Mr Kormos: What do you mean by lump sum? What is your understanding of it?

Mr Wadley: Without suing anyone, I could still access a \$500,000 sum upon my proving that I was completely and totally disabled as a result of any accident, fault of mine or not.

Mr Kormos: I appreciate your saying that, because Mr Ferraro might want to speak to that.

Mr Ferraro: No, he said access. I think he is right.

Mr Runciman: As long as the gentleman, the witness, understands with respect to that having access—I think you sort of know it as we understand it—to a \$500,000 lump sum.

Mr Ferraro: Do you want me to—

Mr Runciman: I think it would be helpful, yes.

Mr Ferraro: Sure, I would be happy to. I think the witness understands it fairly well. Mr Wadley, you indicated that you could access \$500,000. The legislation indicates that indeed there will be up to \$500,000 provided for rehabilitative care, and indeed that an additional \$500,000 be provided that could be accessed for

supplementary long-term care. So you were right.

Mr Runciman: I do not think anyone disagrees with what you have said here today. In fact, all parties agree that the no-fault benefits had to be improved to reflect the real costs of society. They had not been increased, I think, since 1978. I think most of us, certainly on this side of the room, feel that the figure that has been incorporated in the current legislation, if nothing else, is going to change, certainly that there has to be some recognition of inflation protection built into that.

I want to say, though, that even though we do agree with what you are saying, we also, on this side anyway, have extreme difficulty with the idea of doing that alone and at the same time reducing the benefits in a significant way to innocent accident victims. I am sure that you appreciate our concern.

The Chair: Mr Ferraro, on a point of clarification.

Mr Ferraro: I am sorry, Mr Endicott indicated to me as well—Mr Wadley indicated that you had to be completely and totally disabled to access those funds. You do not have to be completely and totally disabled. The justification is that you are injured, quite right.

The Chair: May I have Mr Nixon, Ms Oddie Munro and Mr Velshi for either a minute each or Mr Velshi for three minutes?

Ms Oddie Munro: You have answered my point.

The Chair: Mr Velshi, three minutes.

Mr Velshi: Mr Wadley, thank you for coming. I appreciate this. To me, you are an important witness for the simple reason that we are always talking about a drunk driver hitting somebody and here is something that was nobody's fault; you fell asleep. I fell asleep once. I was very fortunate that the car stopped where it did.

I just want to know, did you have to court to claim?

Mr Wadley: No.

Mr Velshi: Nothing. It was covered in your—

Mr Wadley: I am not sure whether that was waived or anything due to the severity of my injury, I do not know, but I did not have to.

Mr Velshi: I want to compare the present system with the new one we are planning to introduce, what we are talking about, Bill 68. Under the old system, there was no loss of income that you could collect on, is that correct?

Mr Wadley: I am sorry?

Mr Velshi: Loss of income, your salary.

Mr Wadley: What about it?

Mr Velshi: Were you getting anything from the insurance on loss of income?

Mr Wadley: Of course, I lost my job, and I received a percentage of my salary at that time. I was making a picayune salary at the time.

Mr Velshi: And you received a percentage of it.

Mr Wadley: Some percentage; I am not exactly sure what it was.

Mr Velshi: Okay. Under the present system, you will be receiving 80 per cent of whatever you were earning, tax-free, which we feel that covers the full amount up to \$30,000. You are right, in terms of rehabilitation you have access to \$500,000; also, you have long-term care, \$500,000. Under the present system, under rehabilitation you have \$25,000. So the advantages are there in terms of the new act for somebody in your situation.

Mr Wadley: From what I understand, that would be Valhalla to me, comparatively.

Mr Velshi: Thank you very much. I appreciate that very much, because we are always hearing about the drunk driver hitting somebody innocent. I have always said that the innocent have to be protected, and somebody like you, who was not innocent in terms of your being hit by a drunk driver, but you were responsible for your own action and it was purely innocent.

The Chair: So as not to mislead either the witness or the television audience, Mr Velshi, I think you said that individuals did not have access to any income replacement now. Under the current no-fault benefits they would be eligible for up to \$140 a week, so there is, for two years, but there still is income replacement available under the current legislation.

Mr Kormos: Plus whatever extra coverage they bought.

Mr Chair: Yes.

Mr Kormos: It is basic. That is a double-edged sword. People could buy extra coverage now.

Mr J. B. Nixon: On a point of order, Mr Chairman: under the present system companies are not allowed to sell excess coverage, so it is not available.

The Chair: Thank you very much for your presentation. It is greatly appreciated.

Mr Murray?

Mr Murray: I am not scheduled—

The Chair: As you can see, our next deputant is not here yet. If you are prepared—

Mr Murray: No, I am not prepared until 4:30.

The Chair: Okay; that is fine.

I have a ruling on Mr Runciman's motion. I have discussed the motion at length with the clerk, who has also had—

Mr Runciman: Before you make the ruling, could you give us the basis of the ruling so that we may have an opportunity to comment?

The Chair: Yes, I am going to do that.

I have discussed with the clerk, who has also had discussions with the Clerk of the Legislature, and I just want to bring to the committee's attention the order of reference of 20 December 1989. It is basically the motion that we are operating under. It states,

"Standing committee on general government is to conduct public hearings on and clause-by-clause consideration of Bill 68, An Act to amend Certain Acts Respecting Insurance, for a maximum of five weeks; that the committee be authorized to adjourn to places in Ontario for no more than six days; that the bill be reported to the House on 19 March 1990...."

It is my opinion that your motion contradicts our order of reference in two areas. The order of reference directs us to have time for a period for clause-by-clause and it also directs us to report Bill 68 on 19 March 1990. For those two reasons, I am going to have to rule the motion out of order. I can give you a copy of the reasons, Mr Runciman, but it was the opinion of the clerk which I have taken into consideration in making that determination.

Mr Runciman: I do not agree with that ruling, obviously, and that does not surprise you. I think that on occasions such as this, certainly the interests of the citizens of Ontario would, in my view, override the kinds of partisan politics and the pressure that has been applied to certain individuals in respect to this kind of decision being rendered. We saw that taking place in the audience, and I am not going to suggest that anyone was perhaps unduly influenced, but certainly there were pressure tactics being exercised in respect to this decision coming down today.

1450

I do not know how we can deal with it, other than perhaps to suggest that obviously I am going to challenge a negative ruling, but I want to say that from the point of view of my party, and I

hope the NDP as well, we are going to take a look at this in terms of perhaps raising it in the House.

I think this kind of decision is quite inappropriate in respect to not making the necessary information available. We are talking about very critical information, what the real costs of this policy are going to be to the consumers of this province, and through some procedural fooling around, we are going to have that option precluded and that kind of important evidence not provided to this committee to enable us to make the kind of informed decision that we should be able to make in the best interests of Ontarians.

I simply want to say that I assume, Mr Chairman, given the Liberal majority on this committee, that any challenge is going to go down to defeat, but I want to tell you it is not going to die here and, in my view, we are certainly going to take a very close look at this and challenge what is transpiring here today in the House at a future date.

The Chair: I appreciate that. In all of that, I will have taken that I did not hear a formal challenge to the chair.

Mr Runciman: Well, Mr Chairman—

The Chair: Just hear me out first. I based the decision on your motion before the committee—I sought advice from both the clerk of the committee and, indirectly, the Clerk of the Legislature, and they had given me their best opinion and it was within that context I made the decision. You are still open to: (a) challenge the chair; (b) bring another motion; or (c) as you have indicated, it can be dealt with at the House, but that is my ruling, so I will leave it at that. If you want to challenge the chair, then it is open for that as well.

Mr Runciman: I assume you have not made your formal ruling, in case anyone else wants to comment on it.

The Chair: I am going to allow comment very briefly on it.

Mr Philip: Let me just state this: I think it is important in a ruling that you look at not just the wording of a motion but also the intent of that motion.

The intent of this motion was that the bill was referred to us, that we have full public hearings and that we come to certain conclusions about Bill 68 and perhaps even improve Bill 68 or maybe vote against it after hearing the submissions. Implicit in that motion, then, is the understanding that a committee should be provided with whatever information is necessary

and obtain whatever documents are necessary and hear whatever witnesses are necessary in order to make reasonable conclusions about the legislation.

I think that your ruling could be on a very technical and narrow reading of the motion or you could rule on the intent of the motion itself. It seems to me that if you rule on the intent of the motion, then you have to accept that Mr Runciman and the other opposition members have made a good case that certain information is needed in order to come to reasonable decisions on Bill 68.

I ask that you rule on the intent of the referral, not exclusively on the letter of the referral. Surely what is important in any kind of legislative setting is what was intended by the House at the time in which the particular referral was drafted, in the same way that a court, in looking at a piece of legislation, would read not just the specific bill but also what the Legislature said at the time that bill was passed and what the intent of the legislators was.

The intent of the legislators, the intent of the House leaders, at the time of this referral was clearly that we have full, exhaustive hearings and obtain all the information possible in order to make reasonable conclusions. If that was our intent, and that was certainly the intent of our House leader, Dave Cooke, and I am sure of all three House leaders, then I suggest to you that you would want to rule that while technically perhaps Mr Runciman's motion may not be in order directly, if you examine the specific words, it is in order according to the intent of what the Legislature wanted to do at the time this particular referral was made. Therefore, were I in your position, I would be inclined to rule in the spirit, if you want, of the intention of the Legislature and not take a very literal, legalistic approach to this particular referral.

I will also tell you, Mr Chairman, that if you do not accept this, then I would like to move, and maybe Mr Runciman would move—I would be happy to give him the floor—another motion that would simply demand that the minister provide this information by next week. That certainly would have to be in order, because even the very narrow technical analysis of this referral would not exclude such a motion.

The Chair: You have identified correctly—as I said, in terms of before I give my formal ruling on it, there were three options available. In asking the clerk for advice, and indirectly the Clerk of the Legislature, unfortunately, I can only ask him for advice with respect to the words

that appear before the committee, as opposed to the spirit and intent, which can be interpreted in any number of different circumstances and in an number of different ways. So unfortunately, I am going to have to rule the motion out of order.

Mr Kormos: You did not want to hear from me, Mr Chairman?

The Chair: Sorry, I thought you had identified to speak with Mr Philip as well, or you were pointing to him. Anyway, I am going to rule the motion out of order.

Mr Kormos: Okay, you do not want to hear from me. I understand. I understand perfectly, Mr Chairman, why you would not want to hear from me.

Mr Runciman: I will challenge the chair.

The Chair: The chair has been challenged. Let me make sure I get the wording correct on this. Shall the ruling of the chair stand?

The committee divided on the chair's ruling, which was sustained on the following vote:

Ayes

LeBourdais, McClelland, Nixon, J. B., Oddie Munro, Sola, Velshi.

Nays

Kormos, Philip, Runciman.

Ayes 6; nays 3.

The Chair: Thank you very much.

Mr Runciman: I have a suggestion, if you are prepared to entertain it at this point, for a simple motion that the information requested be made available to this committee no later than Monday next at the start of proceedings.

The Chair: Unless we have the next deputation here to give a copy of that—is Mr Paron here? Not here yet. Mr Dyck, the chiropractor?

Mr Runciman: Perhaps we can agree to no debate on this motion.

The Chair: Yes.

Mr Sola: We can have this motion dealt with in a matter of minutes.

The Chair: Your motion again, Mr Runciman?

Mr Runciman: That the material requested, the filings by insurance companies in respect to rate increases per Bill 68, be made available to this committee no later than the starting hour Monday next, at 1:30.

The Chair: Did you wish to speak to it briefly?

Mr Runciman: No, I think we all understand our positions on this.

The Chair: All those in favour of Mr Runciman's motion?

Mr J. B. Nixon: Point of order.

Mr Kormos: What is this point of order?

Mr J. B. Nixon: On a point of order, Mr Chairman: I do not understand that that is physically possible, given that Mr Ferraro said only 50 per cent of the companies have filed, so what is the point?

The Chair: I will take it as a point of opinion.

Mr Runciman: The member has made a comment which I think requires a response. I made the—

The Chair: Then we will call the question.

Mr Runciman: I made a response this morning in respect to Mr Ferraro's comments that my staff had contacted the deputy. The deputy said the overwhelming number of companies had filed, just a handful have not. If you read my other motion, we talked about having that information made available to us as it was filed subsequently. I am saying, let's have a look at the information that is there now.

Mr Kormos: Yes, show us.

1500

The Chair: Mr Ferraro, on a point of clarification.

Mr Ferraro: Not to dispute what was said to Mr Runciman; the only thing I want to make clear is that it was told to me that approximately 50 per cent of the companies had filed, that indeed a lot of it was confidential and that until the insurance commission ruled on it, I was led to believe it could not be released to the general public.

Mr Runciman: I would like a recorded vote.

The committee divided on Mr Runciman's motion, which was negated on the following vote:

Ayes

Kormos, Philip, Runciman.

Nays

LeBourdais, McClelland, Nixon, J. B., Oddie Munro, Sola, Velshi.

Ayes 3; nays 6.

The Chair: Dr Dyck, would you like to come forward at this time. It is exhibit 47 in your package of material. Doctor, we have 15 minutes. If you could leave some time during your presentation for some comments, questions

and discussion, the committee would appreciate it. Identify yourself for the benefit of Hansard and the TV audience and then please proceed.

GARY DYCK

Dr Dyck: My name is Gary Dyck and I am a chiropractor from Barrie. First, I would like to thank the committee for setting aside time for concerns of individuals such as myself with regard to Bill 68. Rest assured that I will be brief and succinct.

I have personal objections to the bill, specifically the catastrophic economic loss potentially faced by self-employed people who may be injured while this bill is in effect. Protracted time off work, whether I were able to return to my practice or not, would be financially devastating not only to my family but to the families of my four employees.

I have other objections with respect to the bill, including the lack of compensation for pain and suffering and the government's subsidization of the insurance companies. Suffice it to say, however, that on viewing many of these presentations and proceedings on TV, I am aware that these concerns are being addressed by others far more erudite than myself and more cognizant of the social ramifications. For that reason I would like to defer my personal concerns and concentrate on two criticisms from a professional perspective.

As a chiropractor, I see on a daily basis the results of motor vehicle accidents, and in most cases these patients would probably not qualify for the threshold of "permanent serious disfigurement" or "permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature."

None the less, sequelae, such as migraine headaches, chronic neck or lower back pain and lost manual dexterity stemming from broken shoulders, elbows or wrists can be most debilitating for many occupations. Losing the use of a finger, while not meeting the threshold, could ruin a violinist's, a chiropractor's or a typist's career. Unlike cars, some injuries render people incapable of being returned to showroom condition and this is an aftermath of motor vehicle accidents that I feel this bill tends to overlook.

My second concern rests with the fact that OHIP does not fully cover the professional services of chiropractors, psychologists and some self-employed physiotherapists. Thus, some out-of-pocket expenses are incurred by the patient. Now, these expenses, I realize, are supposed to be covered by the present \$140-per-

week no-fault coverage, but it unfortunately arises on occasion that an insurance company will decide that the chiropractic services or psychological services are either no longer necessary or should be stopped, and the patient is then informed that his expenses will no longer be paid.

At the present time this problem is easily overcome by a strongly worded letter from the patient's lawyer, but the proposed legislation would eliminate this protection for the patient's rights. Thus, insurance companies will have the potential to control the type and amount of treatment to which a patient has access.

In closing, I trust these comments identify some of the subtle and inherent dangers present in the proposed legislation. Changes have to be made to make this bill fair to the self-employed and to those in occupations where physical and/or psychological infirmities can be career-ending.

I will happily answer any questions you may have and I thank you for your time.

Mr Kormos: We have actually had insurance company people come here trying to sell, peddle, push this new system where people who are not going to be compensated for pain and suffering are going to be some 95 per cent of innocent victims. I heard one of them the other day say he would just as soon forgo any right to be compensated for a bad whiplash, that he would just as soon forgo that because after all, the no-fault provisions are going to be increased. We have been insisting that they be increased for a long time, the no-faults.

What do you have to say to somebody who would say something like that, that people should not be compensated for the pain and suffering inherent? There is an image out there that whiplash does not really hurt, that it is just malingerers and people who are faking injuries who have whiplash; you know, the cartoon image of the person who gets out of the car holding his neck saying, "My neck, my neck." Tell us about the pain associated with whiplash if you can.

Dr Dyck: I guess there is a problem associated with the injury of whiplash in that there are people who will play it for all they can get. A true whiplash, however, can be very debilitating. Soft tissue injury can go on for years. I alluded to some of the sequelae from such an injury when I talked about migraine headaches and chronic neck pain, various visual disturbances, dizziness, personality changes. All sorts of horrible

side-effects accompany a true whiplash type of injury.

There are other injuries that would also render someone incapable of carrying on with his regular position. Whiplash, unfortunately, has been used and overused and such. I would rather not comment specifically on that, but say that there are numerous other injuries that will not be properly recognized and compensated for, should this bill go through.

Mr Philip: At the present time my staff and I are representing some 340 people who have workers' compensation claims. One of the things I find hard to distinguish is between psychological pain, which is very real, and physiological pain. I am sure you agree there is a connection, and indeed workers' compensation, bad as it may be, recognizes payment for psychological pain. Is it your opinion that you can separate them easily the way this legislation does, or do you feel people should be compensated for the very real pain they have, be they headaches or other psychological stresses that are caused by a physiological occurrence?

Dr Dyck: The psychological overlays and psychological pain are not my specialty, of course. None the less, any time there is prolonged physical pain, accompanying it often will be depression, changes in family life and social structure, and undeniably along with that has to go some sort of psychological problem as well. A bad physical injury will be accompanied down the road, if it is protracted, by psychological problems, anxiety, etc. That is not a field I feel I should really comment on, other than saying that protracted physical injury will result in some degree of psychological impairment as well, and for that reason I think the bill misses the mark there. I did not comment on that in my presentation because that is not my area of expertise, but there is a tie-in; there is an overlap between the two regions.

Ms Oddie Munro: It is my understanding on the no-fault side that the rehab benefits that are immediately available would include the provision, sometimes with the approval of a medical adviser, of chiropractic and psychologists and that the schedule of benefits makes reference specifically to psychological assessment, both for the person injured and for the families. It is also my understanding that long-term benefits would take that into account.

I guess I would like to know what your assessment of your current receipt of insurance would be and how you compare that within the plan itself. I appreciate very much your recom-

mendations and concerns on definitions of "psychology," but I am just wondering what your evaluation is on the current system as you would receive rehab benefits including chiropractic and the proposed bill, because I thought we had gone some way to make recognition of rehab.

Dr Dyck: My understanding is that the limit for rehabilitation services has been raised, proposed, in this bill from \$25,000 to \$500,000. I do not deal with the people who would approach those numbers at all. I do not deal with the people who are in hospital for years and years.

Given that they have \$25,000 worth of rehabilitation coverage now, however, on occasion I have difficulty, or patients have difficulty, getting paid for those rehabilitation services under that \$25,000 umbrella that presently exists. They cannot claim from that now sometimes. With most insurance companies there is no problem, but I am saying that there is that potential. Whether the umbrella is raised from \$25,000 to \$500,000 to \$1 million, the potential still exists for the insurance company or an independent adjuster to say, "We have now paid out \$300 on your behalf for chiropractic services and we deem that as all that is necessary." Although on paper the increase is dramatic and looks excellent, in real life, getting the money is the problem in some situations.

Ms Oddie Munro: Some people have appeared before the committee who indicate that there may have been a lack of information, given either by the insurance companies to the client or by the client to rehab, that could have been accessed. I am still trying to seek better information on why people do not use the \$25,000, and obviously it would have an effect on the \$500,000. You are saying it is because the insurers themselves make it difficult for a client to make a case.

Dr Dyck: I do not want to make a blanket statement concerning all insurance companies.

Ms Oddie Munro: I understand.

Dr Dyck: It will happen that if I, for example, am treating Mr Smith for six weeks for a post-accident neck injury that the insurance company or individuals in that insurance company will tell the patient: "Okay, you have tried that. Obviously, because you are still having headaches, that is not the route you should be going, maybe, so we will not cover for the treatment." Although they should be covered, they cannot get access to the money.

At the present time, because they should be covered, a letter from the lawyer will just say:

"Wait a minute. Cover them or we will meet in court." Then the road is paved and everything proceeds as should be expected. I just see the potential for a problem if there is nobody who can rattle the cage on behalf of the patient, where the patient can be shifted around and not get the treatment to which he is entitled or which he might seek.

The Chair: Dr Dyck, thank you very much for your presentation.

Mr Paron is not here yet. Mr Verdun is not in the audience. Ms Jobst, no. Mr Carson, no, and Mr Murray is apparently not in the room. Seeing none, I am going to recess the committee for 15 minutes and reconvene at 3:30.

The committee recessed at 1514.

1540

The Chair: I am going to recognize a quorum and call the committee back to order. Welcome to the committee, Mr Verdun. Copies of your presentation are being circulated by the clerk. I would like to say that for the next 15 minutes the committee time is yours. If you could leave some time for some questions, comments and discussion, we would appreciate that. If you could identify yourself for the benefit of Hansard, as well as the TV audience, we would appreciate that. Please proceed.

ROBERT VERDUN

Mr Verdun: My name is Bob Verdun. I have a hard time identifying myself because I do many things. I guess I am best described as a journalist entrepreneur. My wife and I own our own newspaper publishing business in Elmira. Mr Chairman, I am familiar with you because I am also a part-time farmer.

The Chair: I am familiar with your publications.

Mr Verdun: Thank you. For several years I have had a particular interest in the insurance industry in general. One of the publications that is produced in our shop is the Canadian Journal of Life Insurance, so I am immersed in insurance issues and have been for many years.

The issues of automobile insurance of course are not new. You have been struggling with them in a high profile way recently, but it is something that has been debated in the public eye for some time. In my spare time I have been working on a concept of automobile insurance that is breath-takingly simple in its idea, but I think answers a lot of needs. While you have been hearing from the insurance lobby and the legal lobby as to various impacts that your no-fault plan would

have, I guess I am a little nervy to appear before you and suggest that I think automobile insurance premiums should actually be higher than they are.

The reasons are outlined in considerable detail. There are six pages to this proposal and I will try to summarize it just so that you can have a grasp of what I am trying to suggest as an alternative to reducing individual responsibility and taking away any amount of the citizen's right to seek full redress in the event of an accident occurring.

What I have essentially done is take the concept of whole life insurance, cash value insurance, and apply those principles to automobile insurance. As automobile insurance currently functions, it is a bit like a lottery. You pay your money and you take your chances and you hope not to win. You do not want to cash in on that kind of insurance, but you pay your money and it is gone.

What I am suggesting would be more in the public interest is an approach that is a form of coinsurance where the individual takes a lot more responsibility for what happens after the insurance contract is entered into. In this plan there is a function of a deposit that would stay to the credit of the insurance policyholder and over a period of years would accumulate for a safe driver rather substantial values. I would suggest if this kind of system is properly structured, a safe driver could find in 10 years that he has enough surplus earned to start reducing his premiums, and within 20 years would never have to pay premiums again as long as the driver was safe and had no claims.

About a year ago I sat down with the senior executives of a couple of financial companies that are not currently in the automobile insurance business, and they were extremely interested in it. We had some serious discussions about buying my concept, but in the end they backed off because of the deliberations of the government of Ontario and the matter that is now before this committee, because the no-fault plan tends to take away a lot of the benefits that would come from this kind of approach of coinsurance.

To a large extent, insurance companies make most of their profits by being money managers, not by taking your premiums and paying your claims. They make their money by having your cash to invest. A good financial institution today looks at itself as a money management company. They look at how they can best bring in money, either in the form of premiums or investment certificates, or whatever it is, and how they can best put that money to work. I am trying to

capitalize on that expertise of financial institutions to work to the benefit of the policyholder so that the policyholder would share in the profits that are made on the investment income.

It is a completely different approach, and the companies currently in the automobile insurance business are not necessarily going to find it appealing, because they like the system the way it works and they are, I think, being a little too successful in persuading this government that we should have higher premiums and less liability for the insurance companies. I do not envy the job that you have, trying to find a solution to this, and I am not suggesting that this is the only answer, but it is an approach that really turns the whole issue around and goes to the individual and says, "Here's an opportunity for you to have a bigger say in how the insurance works." It really focuses on individual responsibility, because most accidents are of a minor nature.

The biggest percentage of the money that insurance companies pay out is for claims in the value range of \$3,000 to \$6,000. We pay the most attention to the high-profile personal injury cases, but the real burden for the insurance industry is in the small accidents, most of which are preventable. I mean, they are all preventable. A lot of them occur under bad road conditions where we really should stay home and take public transit instead. So the focus of this is very clearly to the individual car owner, to say: "This is an expensive procedure that you're engaged in. You can save a great deal of money if you take every possible effort to avoid risk, to reduce your exposure to risk."

Because of the unusual nature of it, I would rather leave most of my presentation time for questions and discussion. You have the proposal in detail. It is best taken home and read through at your leisure in terms of the detail. As I said, I have had meetings with the senior executives of two financial services companies, diversified companies. We bounced around some of the detail ideas. So this has been given some serious discussion at a functional level, but we will never get anywhere at the functional level if we do not have some opportunity to put the concept into practice, which is where we end up at the political level here.

So I would like to give you the opportunity to question me and we will have a little discussion as to why this kind of revolutionary proposal is an alternative to the no-fault system and why, in the end, I think it is the only way that the government can deliver on its promise of eventually reducing

people's car insurance premiums, because this is one way it can be done.

Mr Philip: Thank you for an interesting brief. I would like more time to read it, as you say. I guess in a certain sense this has been tried to some extent, would you not agree, by the insurance industry already? Would abstainers not be an example of where you take a group of people who should not, because of their life patterns or whatever, have as many accidents, and then you say to them, "I'm going to give you a special rate"?

Indeed, as I understand it, Co-operators was started because farmers in Ontario thought that they were being ripped off by the insurance companies and therefore got together and formed what is now a very large company that insures not just farmers and rural people but also an awful lot of urban drivers, and therefore may have lost its original purpose. But it was based on the concept that farmers tend not to drive as much or in as serious conditions and therefore they were subsidizing people, like me, who drive around Toronto where perhaps the chances of an accident are higher.

Mr Verdun: I would fully agree with you. That is a form of positive selection. Any good insurance company managing its actuarial portfolio tries to do that. In fact, my own situation is that we have our car insurance with the Peel and Maryborough Mutual Fire Insurance Co; and that is Peel township, not Peel region. Peel township has 3,000 people and Maryborough has 2,000, I think. It is a very well-managed farmers' mutual company and almost all of its customers are either farmers or people in the rural area. They manage their risk very well and I have extremely low rates for automobile insurance.

That is not the answer that can be applied province-wide, but the principle can be. There is positive selection working to the benefit of that small mutual insurance company that I deal with. This is a way to allow the individual to have the benefit of positive selection because the individual controls what risk you are exposed to. Even where you park your car has some degree of risk attached to it. You can avoid the likelihood of damage if you park in a safe place. We make these decisions every day, and under the current system we do not get an awful lot of reward other than avoiding the hassle of having to get your car fixed.

1550

Mr Philip: Each of us at different stages in our lives has different amounts of disposable income. In the case of automobile insurance, it is

not disposable income. We are required by law to carry it and we have to carry it. Otherwise there are certain consequences of not carrying it, which I at least certainly would not want to gamble with.

There are people in their upper 40s who probably have more disposable income than people who are starting off in their careers and trying to buy homes and have other expenses and have children, or children going to college even. Would this so heavily front-end-load the history of one's insurance that insurance would be prohibitive to young families and immigrants who have just moved to the country but may have successful driving in other countries and who are in fact taking out what amounts to a new policy?

Mr Verdun: I sympathize with your point, but this is the whole point that we have faced. The young driver pays a very high premium now and it is gone. If every six months you pay the money and you never get that back, the only thing you can do is earn a better rating so that your premium goes down. My suggestion is that if this principle were applied, that high premium would not necessarily have to be any higher but there would be a savings element in there.

All young people need to learn how to save. This is an enforced type of saving that is not going to make them any worse off than they are now but in fact would put most young people in a much stronger position, and it would certainly be a powerful incentive to drive more safely. Let's face it, young people are more dangerous drivers.

I do not know about you, but I will admit to the fact that when I was a teenager, some things happened in the car I was driving that I regret happened. It was not always my fault; sometimes it was somebody who was driving with me who did something crazy, like almost climbing out the window. Young people do that. This is a positive incentive. They are going to pay that money, but they know that if they drive safety they are going to get credit for it.

Mr McClelland: Mr Verdun, thank you for being here today. I just want to very briefly comment on one of your opening comments. I too will take the opportunity to review this. May I say at the outset thank you for bringing us something a little bit different. It is a welcome change. It does not deal specifically with the bill, but it will make interesting reading I am sure.

You mention in your introduction, "Rather than your taking any steps to remove responsibility for fault in motor vehicle accidents," and you go on to say that we ought to have a system that

"reinforces responsibility, directly penalizes careless drivers, and provides positive financial incentives." To a certain extent, the current system tries to do that. That is reflected in the premiums. It does not do that totally, because ultimately we all pay for increased costs associated with driving.

I just want to point out to you what I think is a misconception with respect to the proposed legislation in as much as it is my view that the legislation proposed in Bill 68—I would not suggest that it amplifies the current system with respect to reinforcing responsibility, directly penalizing careless drivers or providing positive financial incentives, but it does not detract from the incentives currently built into the system.

I would be curious in knowing why you make the implicit statement here that the proposed system in fact removes responsibility. In my view, it does not do that. I would even suggest that some of the parallel announcements by our Solicitor General (Mr Offer) and others with respect to greater enforcement and increased fines may in fact provide, albeit not positive financial incentives, certainly a disincentive. And it certainly reinforces responsibility.

On the financial aspect, as you may or may not know, a rating system will continue in place so that poor drivers will in fact pay more than those with a good record. So I am somewhat curious as to you how you arrive at the conclusion that this system—as I said, I do not suggest that it does it better than the current system in total, but I do not think that it can reasonably be said to take away from what we now have in place.

Mr Verdun: I do not disagree with you. I have read everything that has come out from the government on this issue. I think you are making good progress on a number of issues that have been neglected in the past. I come down to something that we often forget, that our whole economy, our whole society is the sum of billions of small decisions, and when you nudge things in the right direction, they multiply in an amazing way. When you keep telling the public that we have a no-fault system, however limited it may be, the idea gets out to people that the government is taking care of them, that there is going to be less responsibility for them, that the government is policing the insurance industry and that they are going to pay less and be burdened less. This is the message that comes out to the general public. I understand that the people on this committee know better. You are dealing with it. There are arguments as to how much right you are taking away from any individual. It is

some, but it may well be fully acceptable in the kind of society we live in to do that. What I am more concerned about is the message that gets to the ordinary driver.

Mr McClelland: That point is well taken. I thank you for that.

The Chair: Thank you very much for your presentation. We are out of time, Mr McClelland. I am sorry about that.

Mr Verdun: Can we not take another five minutes, sir? We started early.

The Chair: Actually, we started at 20 minutes to, so your 15 minutes is up and there are other people who have presentations as well. Thank you very much.

Mr Verdun: Okay, that is fine.

The Chair: Mrs Jobst, please come forward. The clerk is distributing copies of your background information as well as your material. The next 15 minutes are yours. If you could leave some time for some questions, comments and discussions we would appreciate that. Please proceed.

LOLA JOBST

Mrs Jobst: Mr Chairman, ladies and gentleman, thank you for giving me this opportunity to speak to you this afternoon. My husband and I live in Guelph. We came to Canada in January 1987 from Australia, and on 25 November of that same year the car in which he was driving went out of control on a bend in the road covered with black ice. He was hit broadside on by an oncoming pickup truck. Because of the dangerous weather conditions, the police reported 33 accidents in the Guelph area on that day.

He was released from the car by the jaws of life and admitted to the Hamilton General Hospital intensive care unit. At the time of the accident he was aged 53 years. He suffered a closed-head injury with extensive damage to all areas of his brain as well as fractured ribs on the right side, a collapsed lung, damage around the right eye, bleeding from the liver and blood in the left ear. He remained in a coma for three weeks and gradually came out of it over the next two weeks. The results of the injuries were severe language and speech impairments, reduced motor speed—he spent six months using the support of a wheelchair and had to learn all basic daily living skills—reduced memory, lack of motivation and initiative, disorientation, reduced concentration, impulsive behaviour, lack of insight into the effect of his behaviour on others, a personality change, emotional instability and lack of sense of

self-worth because he was no longer able to work.

He remained in the Hamilton General Hospital for four and a half months and he was discharged awaiting admittance to the Holbrook Rehabilitation Centre at Chedoke-McMaster Hospitals. Because of the unavailability of a bed at Chedoke, he spent two and a half months at home under the care of the Victorian Order of Nurses. This was an extremely difficult period of adjustment for both my husband and me. Apart from the results of the injuries, which I have already summarized, his homecoming was like a terrible dream to him, for he had no recollection of even leaving Australia. Our lovely home, which we had so much pleasure in buying only months before, was quite unfamiliar to him. He was in a strange country among strangers and the only familiar face he knew was mine.

1600

The time spent at Chedoke when he finally was admitted was two and a half months of intensive therapy in all areas. Upon returning home from Chedoke he waited three months until a home therapist was made available, continuing in the meantime his speech therapy and physiotherapy as an outpatient at St Joseph's Hospital in Guelph. A computer was made available, which proved a great asset in his rehabilitation, and after 15 months of home therapy on a regular basis gains have been made in all areas, and improvements continue.

People who have never been in a situation like the one that involves me and my husband often are under the impression that the community support groups are readily available for assistance. This is not always so. In fact, in my husband's case there is nothing out there for him, mainly due to the fact that 80 per cent of the acquired brain injury victims are aged between 18 and 25 years and so the programs, and rightly so, are geared for this group. In my husband's case, his needs and the goals which have been set for him can be found only in his home. The funds to be able to meet these needs are diminishing and the home therapy program will soon be ended. However, it is considered by Dr Garner of the acquired brain injury program at Chedoke and my husband's home therapist, Robin May, that if more funds were available, my husband would continue to benefit from this home therapy.

In my husband's case, he is fortunate in having a devoted wife who will, by God's grace, continue to take full responsibility for his welfare and his therapy as far as my ability will allow.

The tremendous strain of having to face this responsibility is ever before me, and I sincerely hope that if the new plan is adopted, some of this strain for others in a similar situation may be alleviated.

In conclusion, it is my opinion, as things presently stand, that therapy is governed by the amount of funds available and not, as it should be, by the needs of the injured person. If my husband had received the proposed 80 per cent of his income instead of the present \$140 per week, the present drain on our personal finances would have been greatly eased and the supplementary medical care and rehabilitation under the new plan would mean that my husband's home therapy program could continue and the high expectations the doctors and therapists have for him would be assured.

I thank you for your attention.

Mr Kormos: Once again, some special thanks to you. Unlike all the professionals and lawyers and doctors and people who earn their livings around the area of care, let's say, for people like yourself to come out here is sort of a special contribution to the committee hearings.

We had a gentleman here earlier today who was similarly injured in a motor vehicle accident and there was no one to look to for compensation. A couple of weeks ago we had a young fellow who had a swimming pool spinal cord injury, not at all uncommon; again, some serious injuries suffered. You would not distinguish, then, between a person like your husband, who was injured in a motor vehicle accident, a person injured in a swimming pool accident or a person injured in a fall off his roof while he is trying to clean the eavestroughs. I am trusting that you would hope we would develop support systems, treatment programs, caring systems for all of those people.

The bottom line is that a society that calls itself civilized should be ensuring that anyone who needs the services and who finds himself either financially unable to pay for himself or overburdened, should be provided with them. We oftentimes forget the great middle class; these are the people for whom sometimes there is an income support system, but for whom special burdens create a financial burden.

You are saying that our communities should be providing health care, rehabilitative care, regardless of where the accident occurred and regardless of whose fault it is.

Mrs Jobst: Yes, I do say that because I know that in my husband's case he would not be able to continue with his therapy. At this point in his

recovery, he has now reached a point where he is responding so much better to his therapy than he did, say, even six months ago. Unfortunately, the funds that are available for him to continue his therapy are almost diminished and so the burden of it will fall on to me in order to keep that going.

Of course, now that he has become very much more self-motivated, he is doing a tremendous amount in order to be able to help himself. For instance, he would have no recollection of what was happening here today, but because he is able to record and take home this afternoon's presentation and so on, he will be able to listen to it and be able to help himself in that regard. He is doing this kind of thing all the time but he needs to have the support and the help from family and friends in order to be able to do this. In many cases, I would say, this is not always available to these people.

Mr Kormos: How much time have I got?

The Vice-Chair: Mr Philip wanted to use just a portion.

Mr Kormos: How much time have I got?

The Vice-Chair: A total of four.

Mr Kormos: We have a total of four. How much did I just use?

The Vice-Chair: About three and a half.

Mr Philip: I appreciate your coming here. If this question is prying too much, please tell me and I will understand.

Do you feel that someone in a position like yourself should have available to her, as a result of the accident of a spouse or someone who is close to her, covered under the accident insurance program, benefits? Did you feel that you would have benefited by certain types of therapy support systems that perhaps were not covered or that they should be covered under the present program? I am sure you were under a certain amount of stress and so forth. You could not have had this happen to someone you love without having that kind of thing.

Mrs Jobst: I think you would only know of the strain and stress that has happened in my life only if you would have had to have gone through that experience. I must say that the support we have been able to have from the therapists who have been used in his rehabilitation has been adequate up to this point, but if we had extra funds which the new plan would provide, my husband would benefit a great deal more and the strain on me would be alleviated to a certain extent.

Mr Philip: Did you feel that services were available to you, personally, in addition to the

services that were available to your husband? I am not asking whether you needed them or whether you had to use them, but did you feel that they were there?

Mrs Jobst: I had to look for the services. There were many found through my own initiative.

Ms Oddie Munro: Mr Velshi would like to share my time.

One of the proposed benefits of the scheme is that the rehab services themselves would become available immediately. I gather there was some problem there in terms of accessibility. In the two instances where you had to wait for services, did your husband suffer a relapse? Did he lose a lot of the progress that he was achieving under rehab?

Mrs Jobst: No. I can honestly say that he did not regress. He certainly did not go forward perhaps as quickly as he would have done had he been immediately admitted to the Chedoke McMaster hospital but the reason that he was not admitted to Chedoke was because he had to wait for a bed. I believe at that time there were only seven beds available for accident victims when my husband was ready to go there. In the time that he spent at home, I did what I could to cope with the situation to the best of my ability and, as I mentioned in my report, we did have the assistance of the Victorian Order of Nurses, who came and helped with that situation. But it was not until he went to Chedoke that he was able to get the full benefit from his therapy.

1610

Ms Oddie Munro: And under the current scheme you are not able to provide for long-term care.

Mrs Jobst: That is correct, under the current scheme. It is two and a quarter years since the accident happened. The money that was provided in the policy under which he was covered has now diminished and, of course, when it does run out, his home therapy program will conclude.

The reason I have stated here that he needs his therapy in his home is because my husband's hobbies for many years before he had the accident were tape recording, videography, photography, all at almost professional level. He has a studio in our home and he practically lives in the studio now. He has had to relearn how to use all his equipment. For six months or so he was not even able to touch it. He could not remember how to do even the simplest thing, but he has relearned and his whole life now revolves around his studio.

Fortunately, he has this to fall back on because, as I have mentioned, there really is nothing out there for him in regard to community support. He is probably a unique kind of person. He does not fall into that category of the general run of things.

Ms Oddie Munro: What are you doing now? Is the money running out for the home therapy?

Mrs Jobst: Yes. It will be finished probably within another month.

Ms Oddie Munro: Where would you go next?

Mrs Jobst: He will not have any further formal therapy. I will continue to give him his speech therapy because I have been trained and helped by the speech therapist who has dealt with him over the last two years. So I am capable to a certain degree to help him with that.

I have a friend who has access to a gymnasium at a high school in which he worked and so he goes to that gymnasium for his exercises, which we supervise. For the rest of the time, I have learned to be able to gear my conversation, whatever we are doing, in order to be a therapy program without possibly him even knowing that he is getting therapy at that time.

The Vice-Chair: Mr Velshi, if you could just be very brief in your final question.

Mr Velshi: I appreciate your coming here. Bill 68, the legislation that we are talking about now, is meant for the sole purpose of helping people like you. Under the old system, the present regime, you do run out of money and you have the problem of running out of money. Under the new system, whether you are at fault or not, you are protected with \$500,000 for rehabilitation, \$500,000 for long-term care, together with the income supplement up to \$480.

This is one of the reasons why I appreciate your coming over because we are always talking about the drunk driver who hits somebody and is responsible. Nobody talks about these types of tragedies that you are now saying and for that reason I am glad, because you are the second presenter who has come in today that has told us of the value of this bill.

I am feeling very comfortable now that it is going to serve the purpose that we intend it to serve and I do appreciate it.

Mrs Jobst: That is the reason I have been so willing to speak because I feel that although my husband is not going to benefit from this, I would do anything to alleviate this problem that I have had to face for other people if this plan can be adopted.

Mr Velshi: It is just that what you say today is not going to hit the headlines because good things do not hit the headlines. You are going to hear all the wrong things tomorrow. Thank you very much for coming.

The Vice-Chair: Thank you very much for your presentation. It is unfortunate that on coming to our country this kind of tragedy had to befall you but I wish you well in the future. Thank you both.

Our next individual is John Carson. Mr Carson, you will have 15 minutes. Try to leave a portion of the 15 minutes for questions, please.

JOHN K. CARSON

Mr Carson: I believe everybody has a copy of this. Would it be in order if we took the first eight minutes and let everybody read it and then we could proceed?

The Vice-Chair: If you want it read into the record, you would have to read that eight minutes of content. We might follow along with you as you read it, if you wish, and then it will be formally on the record.

Mr Carson: That is fine. It has a reading time for me of about 12 minutes orally, but that is okay.

I will begin by introducing myself. I am a retired high school business teacher from the Barrie area. Before entering the teaching profession some 30 years ago, I was an insurance company accountant for a period of about 10 years.

We had two cases of serious permanent disability arising out of an automobile accident within our family connection and this situation has of course stimulated my interest in this current legislation.

It is a well-known fact that a large segment of the general public has no confidence in the statistics compiled by the insurance industry on profit margins and accident rates. The suspicion exists that the companies have large secret reserves against unsettled claims, akin to those of banks against shaky loans, and that these reserves can be used to expand or shrink profits as the occasion demands. Indeed, it was public dissatisfaction of this general sort that produced the crisis which gave rise to the particular piece of legislation we have before us today, and that viewpoint will continue to cast a shadow over the legislation as attempts are made to demonstrate its merits in practice.

This negative public opinion could be greatly mitigated if the government were to set up a specialized statistical bureau and compile its own

detailed statistics on automobile insurance premiums and claims. Needless to say, this would be quite a challenge.

Short of that, the companies might be required to follow the practice of large industrial corporations and include, in their published financial statement each year, comparative data for the previous nine years; that is, 10 years in all. To be useful, the financial results of all of these previous years would have to be restated to show the impact of the difference between the original estimates for claims and the amount of the eventual settlements.

If the circulation of annual financial statements thus purified seemed still too much to ask, the public should at least be given unrestricted access to the statistical return traditionally filed by companies with the federal and provincial regulatory authorities. A good investigative reporter could thus inform the public accordingly.

The sad thing about all of this is that the companies may in fact have been losing money to the alarming extent which they have insistently maintained. However, a very large segment of the public does not believe it. One frequently hears remarks such as the following, "If the companies are losing all the money they say they are on their auto business, you would think they would welcome the government coming in and taking them out of their misery."

If automobile insurance companies were required to have their shares listed for trading on the major Canadian stock exchanges, there would always be a very good retort available in this situation, "If you think we are making so much money, why don't you buy some of our shares and get rich?" As it is now, there are virtually no listed companies in this field at the present time.

Granted, a major transformation here could not be accomplished overnight. Profit sharing is relatively undeveloped in the automobile insurance field as compared with, say, life insurance. Policyholders can be let in on a share of the profits by the issuing of participating policies and also through group insurance. Existing legislation has long obstructed innovation along these lines by auto insurers. Mutual companies and true co-operatives have been assisted in other provinces but not in Ontario.

Taking an entirely different perspective on this subject, one might begin by asking what it is that people want from their auto insurance other than low premiums. It seems clear that when this is discussed in detail, they want better assurance

than exists at present that they will receive adequate compensation if they are injured in an auto accident through no fault of their own. The word "adequate" means different things to different people. The other side of the coin here, of course, is that they expect their own insurance to adequately compensate the victim if they themselves happen to be the negligent party.

I am sure you have already had hypothetical situations brought to your attention where an innocent victim under the proposed no-fault plan would receive less compensation than would likely accrue to him under our traditional tort system. However, I would like to point out a few details in this general area which may not have been adequately dealt with.

1620

First, if the victim has disability insurance through a group plan where he works, this insurance pays first in the event of an accident. Accordingly, the result will likely be to change the victim's net compensation picture substantially and to bring it within the adequate zone. As these group disability plans are becoming very common and regularly pay generous benefits, the outcome just referred to will occur quite often. However, inasmuch as part of the victim's claim is going to be diverted from his auto policy to his disability policy, he should get an appropriate premium credit when he purchases his auto insurance. Of course, only those with disability insurance in force would be entitled to the credit. I calculate that it might amount to \$100 per year.

There are many people who would very much like to have a broad form of disability insurance but cannot purchase it, either because there is no group plan where they work or they are self-employed and individual policies are not available. It would be a great boost for this no-fault program if every motorist could purchase a broad form of disability cover along with his auto insurance. The traditional disability insurance sold with auto insurance, of course, is a very narrow form.

Incidentally, the designers of this no-fault plan show no signs of being aware of the fact that benefits under group disability plans are sometimes taxable and sometimes not, as a result of a puzzling section in the Income Tax Act. One would expect compensation always to be tax-free. Hopefully, some suitable arrangement will be worked out with the federal authorities.

There is yet another aspect of this general topic that merits brief comment. The public has strong views about whether negligent drivers should be completely relieved of the financial conse-

quences of their negligence. Most responsible adults believe that such drivers should be required to pay the higher premiums indicated by their accident record. At the very least, in an effort at deterrence they should be confronted annually with the annual amount of the accumulated cost to date of all accidents for which they have been held totally or partially responsible. Under the proposed no-fault plan, this may not happen. Claims data may not be transferred efficiently from the company paying the claim to the company insuring the negligent driver. If outside disability insurance is involved, it will be an additional source of error. The new plan should require that this process be handled efficiently. Of course, it will be much better if the traditional procedure of charging higher premiums to drivers with poor accident records were to be continued.

The fact that claims are going to be settled between a policyholder and his own company does not require that the full amount of the claim be ultimately absorbed by his company. The part of the loss attributed to the other driver could easily be transferred to this company in the second stage of accounting. I am not clear as to whether or not there is going to be an attempt to attribute contributory negligence on the part of the victim as has been done in the past. From the point of view of the long-run stability of the plan, the victim's insurance company should only be saddled with the share of the claim which is properly determined to be his.

In conclusion, I would like to describe briefly the circumstances surrounding the two serious permanent disability cases in our family circle. In the first case, the accident occurred 40 years ago. A careless driver pulled out to pass in a heavy fog. The victim, a toddler at the time, received serious permanent brain injuries. His father was killed and his mother received serious internal injuries. There was \$50,000 insurance money available and nothing else. I hardly need point out that this has proven insufficient to enable the mother to look after the boy over the years, so the family is living well below the poverty line, whereas the driver who caused the accident is comfortably well off. The problem here, of course, is inflation. At the outset, the \$50,000 appeared as if it might be adequate.

How these victims would fare under the new no-fault plan would again depend on the rate of inflation. If they opted to sue, they would only be better off if the negligent driver carried liability coverage well above the current mandatory minimum of \$200,000. Hopefully, we will soon

receive more details as to how cases of this kind are going to be handled.

The second case involves a self-employed refrigerator serviceman who had a thriving business involving industrial, commercial and farm accounts. In 1975, at the age of 50, he was hit head-on by a drunk driver who had \$100,000 liability insurance and no other assets. He was in the hospital for several years and has not worked a day since. His personal disability insurance was minimal. By necessity, his customers quickly made other connections. His standard of living has been drastically reduced. He naturally feels that he should be compensated in some way for his economic loss.

Compensation for victims who suffer serious permanent disability should be the first consideration in any major revision of our insurance legislation. This matter would seem to require more attention in the no-fault legislation before us.

Mrs LeBourdais: Thank you very much, Mr Carson. I noticed on page 4 of your brief you said, "It would be a great boost for this no-fault program if every motorist could purchase a broad form of disability cover along with his auto insurance." I know you are not here in an official capacity representing seniors, but I am just wondering what you felt, as a senior, as to how those seniors who have incomes in excess of \$30,000 might take as a group to this idea of having that choice.

Mr Carson: I am content with what the plan does for seniors because, as I understand it—the pamphlets circulated, the secondary sources here, are not always as specific as they might be, but I think seniors are well provided for because their expectation of life is not going to take them beyond the scope of the—and they are not likely to be involved in—this is what is not as specific as I would like to see it. But the seniors are all right because they do not have businesses on which they depend. Their economic losses—for the most part, that would not bother me a bit.

Mr J. B. Nixon: On page 5, you raise the issue of whether bad drivers would be charged higher premiums, and that policy, as I understand it, will continue.

Mr Carson: You do not think it is a good thing?

Mr J. B. Nixon: I think it is a good thing and I think it will continue, yes.

Mr Carson: Within reason.

Mr J. B. Nixon: Yes.

Mr Carson: You have to justify it. I was given a routine increase from \$450 to \$1,100 because of a \$59 claim. I bumped into a lady in a parking lot. She insisted that it be fixed up. However, when I explained it to the company, they backed away from it and it was all right.

I do not have any general complaint with company administration of claims other than just recently they seem to have developed a sense of panic, just when there is something in the fire that might help them out. They seem to be getting panicky. I do not know why that is.

Mr J. B. Nixon: Neither do I. One final question. You talk about compensation for victims who suffer serious permanent disabilities as being the first consideration.

Mr Carson: Sure. My young cousin, who is now 40 years of age, I think, is probably the most forgotten man in society. He was permanently disabled and there was not enough insurance really to look after him, and his mother is struggling away. Sure, he gets the medical attention he needs, but he is just nobody.

Mr J. B. Nixon: He has no no-fault benefits, rehabilitation or long-term care or retrofit of the house or anything like that.

Mr Carson: But will these benefits go long enough to take him through to 65? It looks like he is going to live. He might be alive at age 80.

Mr J. B. Nixon: The loss of income goes to age 65.

Mr Philip: It is not indexed.

Mr Carson: It is not indexed, that is right.

Mr J. B. Nixon: That is right, yes.

Mr Philip: Under the present legislation, a senior who has an accident through no fault of his but at the hands of a drunken or irresponsible driver will be in a situation where the drunken, irresponsible driver gets more compensation from this insurance plan than that senior will receive, regardless of the amount of suffering he may have.

1630

Mr Carson: The senior?

Mr Philip: Yes. Do you think that is fair?

Mr Carson: Just a minute. I am not quite sure that I understand it that way.

Mr Philip: If you are in an accident tomorrow, two broken legs, a driver is racing and hits you and you do not meet that threshold because it is only two broken legs but you are in traction or in pain for a couple of years as a result of that, you get absolutely nothing, whereas that irresponsible driver who is racing with a colleague and hits

you at 90 miles an hour will get compensation out of this plan. I am just asking you whether you feel that is fair.

Mr Kormos: A drunk gets \$450 a week.

The Chair: I think, for the clarification of the witness, Mr Philip was referring to being able to sue for pain and suffering. Certainly both individuals would be eligible for the no-fault benefits that are proposed under the legislation.

Mr Kormos: The senior gets \$185; the drunk gets \$450.

Mr Carson: Okay, but let me make one point though. You mentioned the senior. That is a little different. Generally speaking in society, these disability plans cover disability, regardless of the cost. It merely has to take you off the job. They are going to start to roll in, are they not, and are they not going to dominate the market in future years because people will see the merit of them?

Mr Philip: What I am asking you is, do you feel that it is fair that the person to whom it happens, by virtue of being either a teenager or a senior, gets a lot less compensation than the person who is irresponsible and causes the accident in the first place? That is what this does.

Mr Carson: If two people get reasonably well looked after and one does not deserve it as much as the other, I think you have to say, "Oh, well, that's the way it goes." The injustice is not a real injustice. That liability minimum limit was cut so low in this province that it did not take care of some people; \$200,000 is not enough.

Mr Kormos: Quite right. I agree with you entirely.

Mr Carson: The fellow who injured my cousin quite logically settled his claim. He is comfortably well off, he has a nice house, and who would hold it against him? But it is a little incongruous that he is sitting that way and my cousin is struggling. It would almost appear that there should be a sort of retroactive indemnity fund to pick up the negligence of the Legislature in not coping with this inflation business a little faster and providing for higher minimum limits on the liability.

Mr Philip: I guess the point you make is one that I agree with. What this bill does is it immunizes that driver who was irresponsible from any kind of payment. I agree with you that it is pretty unfair that somebody who is the victim is treated worse than the person who caused him to become the victim.

Mr Carson: It makes big demands on your sense of charity.

The Chair: Mr Carson, thank you for your presentation. Mr Ferraro, on a brief point of correction, I believe.

Mr Ferraro: Yes. Mr Carson, thank you for your presentation. Mr Nixon indicated that in the case of your cousin who is seriously and permanently injured, this plan, I think he said, would cease at the age of 65. The 80 per cent of \$450 indeed would go on for the rest of his life.

Mr Carson: It would, eh?

Mr Ferraro: Yes sir.

The Chair: Mr Murray.

MAX MURRAY

Mr Murray: My name is Max Murray and unfortunately I had occasion to deal with the superintendent of insurance by way of an unidentified driver, a hit-and-run driver smashing into my vehicle while I was vacationing in Windsor with my family in the car. We packed up our bags and we found our way home. I contacted the Ministry of Consumer and Commercial Relations people, told them what happened. I had insurance; I did not anticipate any problems. The Consumer and Commercial relations people immediately, on behalf of the superintendent of insurance, hired a very, very well known law firm in Toronto to defend both the superintendent of insurance and the owner of the vehicle.

I thought I would get this matter settled relatively soon. However, I got a little bang on my head. It hurt, but I thought I would be okay. Then shortly after that, I started to suffer seizures. Being a salesman, I depend on a motor vehicle for a living, and now I find myself in a position where I am told that I cannot drive for one year until these seizures stop. Okay, what am I going to do? Really, what am I going to do?

I have a very good family and good friends, as I am sure we all do, and I struggled and struggled and tried. One year was over and I suffered no seizures. I had a brain scan done, excellent cycles. I am ready to go back to work and now I can settle this claim. No. "We don't really think we should be paying you any money because you can't prove that happened because of the car accident. That didn't happen till nine days after." Of course I said: "What? Am I believing what I am hearing? Are these people sincere about this?"

In regard to the insurance company, other than the fact that it would not pay, I have nothing against it. I had to pay the \$100 deductible and because one of the wheels was torn off the front of the car, they had to put a new tire on. They told

me that they upgraded my vehicle and they charged me an extra \$14 for the new tire. It was a little annoying, but nothing compared to the injury.

Anyway, rather than dwelling on that—and people have had worse problems than I—I just keep my fingers crossed like everybody else. Finally at discovery four years later, the superintendent of insurance through his attorney came up with a settlement for me: \$500 to pack my family up and all get on the train. “You are out of a job, you cannot drive for a year, \$500.”

Mr Kormos: It sounds just like no-fault.

Mr Murray: I knew it was not my fault. I knew that. That I knew for sure. This is sort of bringing back things of the past that I really do not like to even talk about but I think it should be mentioned.

Under the Motor Vehicle Accident Claims Act, we could get into court without a jury and tell our story to a judge, without a jury and all of the battling, and no \$500,000 settlements, none of that. The judge within five minutes said: “Come on. What’s going on here?” He took the two attorneys out of the chambers. They came back in and the judge said, “Give Mr Murray \$20,000.” If, under this plan, I was facing the superintendent of insurance, I would have to take the \$500. I would have no judge and I know I would not be sitting here today. I do not know how my life would have unfolded.

I am not the only one. There are people out there who are watching right now, where lawyers are advertising on television, “All you have to do is pick up the phone and call us and your problems are over.” We have been getting this from Buffalo for a long time. They have a threshold no-fault, but they get the 20 per cent and they know when they go into court, if they do not win that case, they are not going to get any money. In Ontario, the lawyers do not have this deterrent. They can talk you into almost anything because you have to pay them anyway.

Interjection.

Mr Murray: Yes. It was about two or three years ago when the lawyers first were permitted this type of advertising, and I am of the opinion that this is what has led to all of us being in this room here today, one of the reasons.

There is really not much more that a person can say. Everything has been said. We have heard it all. I was really, really shocked to find out that here I am sitting here. I can be seen in Peterborough, I can be seen in Toronto, but the people in Scarborough cannot see this. There are about a quarter of a million people in Scarbor-

ough who have not seen one day of this on their cable TV.

1640

I did not mean to be disrespectful to the committee when I said to wait until 4:30, because I had somebody who was involved in that accident. She did not even file a claim. We are not those types of people. We are like you people. This was not whiplash; these were epileptic seizures. You wake up and you cannot remember what happened. You are in the hospital. It could happen at any time, although it has not happened since.

I felt that the judge, by not putting me through that trial, was fair, but the superintendent of insurance should have made a legitimate offer to me when I was prepared, with all my documentation a year after, when I could drive, and: “No more complaints. I’m out of here. Just treat me like a human being.”

What you’re going to have is a bunch of animals running around the city, and that is a fact.

Mr Kormos: What about your own insurer and your no-faults, the wage replacement?

Mr Murray: I am a small businessman. I presented my bank statements.

Mr Kormos: Showing your income.

Mr Murray: Yes. Showing my deposits and my transactions.

Mr Kormos: These are your no-faults that your own insurance company—

Mr Murray: Yes. They would not pay.

Mr Kormos: What do you mean, they would not pay?

Mr Murray: They just said they would not pay.

Mr Kormos: But they had to pay.

Mr Murray: Yes, but they did not pay.

Mr Kormos: What did you have to do?

Mr Murray: Well, you know, here I am. This is the laundry. Okay. I was in tower 10 for a good part of this, okay? Nobody could tell what was going on. “This guy here is acting crazy.” So I was not really in a position—although I filed the writ, I did not serve it in time.

Mr Kormos: You had to sue your own insurance company.

Mr Murray: Oh yes. They still did not pay. I did not get the \$140 a week.

Mr Philip: Under the no-fault part.

Mr Murray: Under the no-fault. I did not get the \$140 a week and I presented my bank

statements, which I will make available to anybody here.

Mr Philip: Isn't no-fault wonderful. Isn't private no-fault wonderful.

Mr Kormos: But that was your own insurance.

Mr Murray: My own insurance company.

Mr Kormos: You did not get screwed around only when you were looking for compensation for your injuries by the other party in this case. What you are telling us is that in this province, if you are hit by—because these guys have been saying, “What about the people hit by a hit-and-run driver?” We have this motor vehicle accident claims fund in Ontario. This happened to you back when? Back in the 1970s?

Mr Murray: No. It was 1980. It was the winding down of the other system.

Mr Kormos: Yes. We have had this around for a long time. We do have a system where, if there is a hit-and-run driver—

Mr Murray: It certainly would have helped if they had given me something. It would have helped.

Mr Kormos: It is a good thing you had a lawyer.

Mr Murray: It is a good thing I had access to the courts.

Mr Kormos: Yes.

Mr Murray: Or I would have had to walk with the \$500. They would have laughed at me and the lawyers would have got paid. The superintendent of insurance would have saved the money that they paid me. The lawyer that he hired would not even admit liability until we walked into the courtroom.

Mr Kormos: Defence lawyers are like that.

Mr J. B. Nixon: We have all heard about the abysmal record that insurance companies have in paying the existing no-fault benefits, and I think it has been clearly demonstrated. Justice Osborne found it, and if you have been watching TV, you have probably heard about other people in similar situations.

One of the really frustrating things has been that the regulatory part of the government does not have any really good ability to go to the insurance company and say, “Pay.” What this

bill does is give the government power to fine them \$100,000 if they do not pay, two per cent interest per month, if they do not pay.

Mr Murray: I would like to comment on that. This is fine and dandy. The government can sue the insurance companies, but the people cannot.

Mr J. B. Nixon: Let me point out to you—

Mr Murray: No. I would like to make a point.

Mr J. B. Nixon: Yes, sure.

Mr Murray: Now it is the same superintendent of insurance that I am going to have to go before. It does not go any further than him now, unless I can prove that I cannot breathe or something.

Mr J. B. Nixon: I would be happy to go through the legislation with you, but there is a process where you can go to mediation and arbitration. You can appeal it to the courts if you do not like the decision there.

Mr Murray: Right, and I can saddled with a big legal fee.

Mr J. B. Nixon: They cannot take it to court. They have to accept the decision of the mediator or the arbitrator.

Mr Murray: Yes, but if it is \$500, it is no bargain for me.

Mr J. B. Nixon: No, but what I am saying to you is that—

Mr Murray: But the last time he said \$500.

Mr J. B. Nixon: Yes, but what I am saying to you is that the amounts you are entitled to are much greater under this bill.

Mr Runciman: Thank you for appearing. I guess, listening to the questioning on the government side, we continually just have to shake our heads. I think the message you are delivering to us is, thank God you had access to the courts.

Mr Murray: Thank God I had access to the courts.

Mr Runciman: That is the bottom-line message.

The Chair: The committee stands adjourned until nine o'clock tomorrow morning in Ottawa.

The committee adjourned at 1645.

CONTENTS

Tuesday 6 February 1990

Insurance Statute Law Amendment Act, 1989	G-751
Ministry of Financial Institutions	G-751
Mercantile and General Reinsurance Company of Canada	G-767
Future Care Cost Associates	G-771
Herman Turkstra	G-775
W. C. Graham	G-781
Afternoon sitting	G-799
Institute of Chartered Accountants of Ontario	G-799
James B. Hoare	G-801
Ed Wadley	G-803
Gary Dyck	G-809
Robert Verdun	G-811
Lola Jobst	G-814
John K. Carson	G-817
Max Murray	G-820
Adjournment	G-822

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Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on General Government

Insurance Statute Law Amendment Act, 1989

Loi des 1989 modifiant des lois concernant l'assurance

Second Session, 34th Parliament

Wednesday 7 February 1990



Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

CONTENTS

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Wednesday 7 February 1990

The committee met at 0900 in Meeting Room Delta B, the Delta Hotel, Ottawa, Ontario.

INSURANCE STATUTE LAW AMENDMENT ACT, 1989

LOI DE 1989 MODIFIANT DES LOIS CONCERNANT L'ASSURANCE

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

Etude du projet de loi 68, Loi portant modification de certaines lois relatives à l'assurance.

The Chair: I am going to recognize a quorum and stay with my usual bad habit of starting on time because we have a full delegation. We welcome CUPE Local 576, Mr Jenkins and Mr Thomas, if they would like to come forward at this time. The clerk has circulated copies of the submission you have presented today, as well as that committee members received in December, marked exhibit 13. You have half an hour. Perhaps you could identify yourselves for the benefit of Hansard. If you also could leave some time for questions and discussion among the committee members, they would appreciate it as well. Please proceed.

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 576

Mr Jenkins: Good morning. My name is Terry Jenkins. I am the president of Canadian Union of Public Employees, Local 576, at the Ottawa Civic Hospital. We look after approximately 1,750 support and clerical workers at the civic hospital and we greatly appreciate the opportunity to voice our concerns about Bill 68 and the proposed Ontario motorist protection plan.

In our opinion, the bill in its current version does not appear to meet the expectations of our members. We realize that the Ontario auto insurance system is in crisis and as we have just said, we have some concerns. We see that the bill shifts the cost of providing income replacement for auto accident victims to disability insurance and sick leave plans.

Subsection 231b(1) of the bill reduces the no-fault benefits received by an insured person by the amount received from a disability insurance plan or a sick leave plan. The net effect

of that section will be to alter the role of negotiated disability and cumulative sick leave plans. They will become the first source of income replacement.

By making sick leave plans and disability insurance plans the first source of replacement income, subsection 231b(1) shifts a significant part of the burden of providing income replacement from the insurer to the workers and employers. A large amount of hospital workers in this province and in this city rely on accumulated sick leave credits to protect them from loss in case of chronic illness, and also, some of those sick leave credits are frequently converted to a cash sum when employees retire.

As you can see today, our thrust has been towards the seeming erosion of our accumulated sick leave plans and long-term disability plans. Simply put, the proposed bill is totally unfair to the workers of our province, and more importantly, to us the hospital workers.

You have our brief that we presented on 14 December 1989. We will give you extra copies this morning. We hope you would have a look at that. As a parting shot, we are saying that Bill 68 is fundamentally unsound legislation. It does not remedy the present crisis in auto insurance. Rather, the bill makes the crisis even worse and we are suggesting the bill should be scrapped.

The Chair: As I mentioned, the committee members have exhibit 13, whether they have it with them or back in their offices. The presenters have highlighted their presentation. I have Mr Kormos and Mr Phillips, for up to seven minutes, whoever wants to go first.

Mr Kormos: Thanks for coming. I should tell you that it is no big secret that CUPE supports and contributes money during election campaigns to the New Democratic Party, and indeed in the riding where I was elected in a by-election last year, CUPE members were particularly active in the campaign and made monetary or financial contributions.

I want to tell you gentlemen that I am proud, having been elected in that by-election to serve the interests of working people in the Legislature, to have the support of working people as represented by CUPE across Ontario. The Liberal Party, however, is the beneficiary of big contributions from the auto insurance industry.

We know that. We know that over \$100,000 was paid to the Liberal Party by way of contributions. Their candidates in the last general election, and indeed several of the members of this very committee, have been the beneficiaries of a rare charity on the part of auto insurers. It seems that they are far more generous with their political contributions to Liberals than they are in terms of their payments to claimants.

I read in yesterday's Ottawa Sun a statement by Harvey Rempel, who calls himself a local representative of the Insurance Bureau of Canada. I do not see Mr Rempel on the list of persons making submissions here today. I am looking forward to his showing up because the timing of this little press release is just remarkable, gentlemen. He says, "If this legislation is passed...." Of course Mr Rempel wants it passed.

The only people who have come before this committee supporting this legislation have been representatives of the automobile insurance industry, with a few exceptions. Trade unionists, teachers, police associations, victims, doctors, lawyers, rehabilitation people, head injury association people and other advocates for the victims and the crippled and disabled have all come before this committee condemning this legislation as doing nothing but constituting incredible windfalls for the automobile insurance industry, but Mr Rempel of Zurich Insurance says that if this bill passes, there should be no rate increases in the Ottawa area next year.

What crap. What absolute indefensible crap. The fact is that the Minister of Financial Institutions (Mr Elston) has promised rate increases in the first year alone of from eight to 50 per cent. That is what the rate increases are going to be. There is not a single bit of data in the possession of the government, or quite frankly in anybody else's possession, that would permit Mr Rempel or anybody else speaking on behalf of the insurance industry to talk about zero increase in the Ottawa area.

The sad thing is that there is nothing contractual about that bold statement in the press that would enable drivers in the Ottawa area to hold him to it. It is a bold-faced lie and it is so typical of how the automobile insurance industry and the government have approached this legislation from day one. There is nothing to support that position. It is a lie, pure and simple, and it is remarkable that Mr Rempel or Zurich would not be among the people making presentations here. It is remarkable that little press release would be

put out in the press and picked up the day before this committee sits here in Ottawa.

It is sad to comment that the material released, after much pressure, by the government yesterday, which constitutes their secret agenda, that is to say, the \$250,000 worth of research they commissioned that was not released to the Ontario Automobile Insurance Board and Kruger for assessment, it is remarkable that not a single bit of that material supports the allegation that \$500 million was paid out in legal fees because there has not been a single bit of data released to demonstrate that.

There has not been a single bit of data released to demonstrate that the government is honest in its declarations about the extent of new aid going to victims, and certainly no data have been made available to demonstrate how incredibly profitable this is going to be for the automobile insurance industry. What a scam this whole legislation is.

Thank you for coming and thank you for your support. I shall keep on supporting the interests of working people and I have no doubt that the Liberals will keep on advocating and supporting the interests of big private insurance companies.

Mr Velshi: You do not support them. They go—

The Chair: Mr Philip.

Mr Kormos: You pea-brain. Don't worry, Velshi. Come on down. Work in the election.

Mr Philip: Mr Chairman—

The Chair: If you can control Mr Kormos—

Mr Philip: If you can control Mr Velshi, then we will be even.

I have been a member of the Legislature. This is my fifth term. I cannot remember any piece of legislation since I have been elected that has taken money directly by legislative draftsmanship out of the pockets of ordinary people and put it into the pockets of large corporations in a direct fashion such as this. Is that not what is happening in this bill? Wages that you have negotiated for in the way of sick benefits are in fact being legislated away from you; in other words, wages you have taken in the form of benefits are simply being wiped clean from those people you are representing.

0910

Mr Jenkins: Absolutely. Also, with unions and collective bargaining, in the future, as time flies, we will continue to negotiate increases, and with the cap that we have it definitely will not be enough, if you want. There are other people who—funny you should mention about the

gentleman in the newspaper. Mr Sterling, I believe, was quoted yesterday in either the *Ottawa Citizen* or another paper as saying the plan brings no great benefits. I am not sure whether that was the *Citizen* or not. I have to agree with him. There are other people who could be affected by this and probably will be.

People who take early retirement, what would happen to them? Will they be much like the hospital workers with their sick leave plans, in that they do have an income coming in? That is a question that was not addressed in the bill, I do not think. Their income will continue to come in because they are on pension. Will they be penalized, much as the hospital workers will be? They just will not be able to sue, because they do have an income, much as they are saying, again, with the hospital workers, that we have a sick leave and long-term disability plan and we will have to use all that prior to.

Mr Philip: Do you find that there is a real injustice, as I do, that one of your workers who has negotiated benefits in lieu of pay—that is what it is because there are only X number of dollars to go around, and I have been on both sides of the collective bargaining table—and through his hard work and collective bargaining has some benefits, will actually get nothing if, say, he is standing on the corner and his two legs are broken because somebody is recklessly having a race at 90 miles an hour down the street and runs over him and breaks both of his legs? That person who has not done anything to bargain and get any kind of collective benefits will actually get money out of the insurance while your worker, the member of your union, will get absolutely nothing as a result of being an innocent bystander who has both legs broken by this irresponsible, reckless driver.

Mr Jenkins: Certainly. It is very unjust. I have a lot of questions. Unfortunately we do not have the time, and they may be in our initial brief. Again, the definition of what is a serious and permanent impairment or what is an impairment to an important bodily function—I might even ask, I do not know whether this is defined in the act or not, what is death? How close do you have to come? Do you have to be in your bed for the rest of your life to be able to collect?

Mr Kormos: Being a Liberal backbencher.

The Chair: Mr Sterling for up to seven minutes. Mr Ferraro on a point of clarification.

Mr Ferraro: Just a minor point that may clear up a little bit: You are absolutely right that the collateral source rule as suggested by Coulter

Osborne does not allow for double payment. However, dealing specifically with the sick benefits portion, if it is in the collective agreement where you have the option, quite frankly, the Ontario motorist protection plan does not require that the individual use up the sick benefits.

I acknowledge, sir, that many collective agreements, as they presently stand now, do not have that option. The point I am trying to make is that in many—for example, public service and teachers have that option. No doubt, assuming this bill passes, it will be an item of discussion around the collective bargaining table in the future.

The Chair: He also raised a question with respect to retired people on pensions, I believe.

Mr Ferraro: Pensions and any other annuities do not affect the income of \$185 of the retired person.

The Chair: Mr Sterling, up to seven minutes.

Mr Sterling: I would like to thank you as well for coming in front of the committee today. The story has been told to us by many other union representatives across the province. I would only like to say that I differ with my friend the member for Welland-Thorold (Mr Kormos), who in some way ties the political donations to the position the parties might take on an issue. I do not believe for a minute that because I never received any donations from CUPE, I would disagree with your position. I did receive donations from insurance companies but I very much oppose them and their quest to bring this bill forward.

Notwithstanding that, I really do think it is important for the people in the Ottawa area to fully understand what is happening to them under Bill 68. Your coming forward is appreciated in that sense in showing the opposition to the bill. I believe that most of the presentations, save and accept those from the insurance companies today, will probably be in opposition.

Under your present sick leave benefits plan that you have negotiated at this time, what kind of benefit would the average worker receive if in fact he was an innocent victim in an automobile accident? Can you quantify that at all?

Mr Jenkins: We have the accumulated sick leave plan, 18 days a year, and if you are off ill for a day, two days, whatever your accumulation is, you get your day's pay, in effect.

Mr Sterling: So if somebody was injured in an automobile accident and was off for six months, does he have presently under your agreement the

choice of either taking the sick leave or not? Can they waive it.

Mr Jenkins: No.

Mr Sterling: So if they were off for six months and then came back to work, they would use all their sick leave benefits that you had negotiated on their part and then would have nothing left if they were sick for another reason than the auto—

Mr Jenkins: That is right. What we have now is a long-term disability plan that clicks in after 120 days. If you did not have 120 days sick leave in your bank, you would have to, much as you would under the bill, I imagine, run through whatever your accumulated sick leave is, if it was three weeks, depending on how long you had been at the hospital, and then go on to a long-term disability plan and that portion left over, if you were fortunate enough to have, for sake of argument, 140 days, you would use the 120 days, go on the long-term disability plan and the remaining portion would be frozen until you returned to work. Then it would continue on to accumulate from there.

Mr Sterling: What I find a bit disturbing about this section you talk about in the act is two things. Number one is that I think smart unions that are going to negotiate future agreements are going to say that the sick leave does not come as a primary source. It will only come secondary after the auto insurance company is held primarily responsible to pay for that. The second thing is that in the interim, those union members who had an agreement which gave them an option, knowing the provisions of this legislation, may in fact take a more beneficial route.

The problem with that is twofold. Number one, for the interim you are going to penalize the person who takes an option in ignorance. In other words, he will take the option of taking the company's plan for a period of time without really knowing the long-term effects of it.

Number two, it puts unions like yours in a very negative position, because you did not know this legislation was coming down when you last negotiated this agreement. Therefore, it really binds you into a situation which is untenable. I just do not understand the reasoning behind this particular clause. Why would they not make it even for everybody, whether you are knowledgeable or not knowledgeable or whether or not your union had a negotiating agreement that in fact covered off this section? I do not understand the reasoning behind or the intent of the section.

0920

Mr Jenkins: Neither do we.

The Chair: Is the long-term disability a certain percentage of what an individual's wages are, and if so what percentage is that?

Mr Jenkins: It is 66 per cent of net.

The Chair: It is 66 per cent of net. Mr Chiarelli for up to seven minutes.

Mr Chiarelli: Just one question: Does your union support the New Democratic Party agenda of a government owned and operated insurance program for Ontario?

Mr Jenkins: I believe the national union perhaps does. I could not swear to a local union supporting it.

Mr Philip: The Consumers' Association of Canada does. I am certain you support what the Consumers' Association of Canada says.

Mr Velshi: Talking about the Consumers' Association of Canada, it says we have gone in the right direction but we have not gone far enough. In that respect, they are saying they are supporting this bill to the extent that they expect it to go a little further.

Mr Sterling has mentioned that only the insurance companies are speaking—

Mr Philip: That is a misinterpretation.

Mr Velshi: Mr Chairman, I have got to have some peace and quiet here.

Mr Philip: You should not lie to the public.

The Chair: Mr Philip, would you care to reconsider that remark?

Mr Philip: He should not mislead the public.

Mr Velshi: Here is the Consumers' Association of Canada's presentation to us.

Mr Philip: The Consumers' Association of Canada—

Mr Velshi: Do you want to read it? I will give it to you just now, but you had better watch what you say.

The Chair: Order, gentlemen.

Mr Velshi: I would like him to withdraw what he said.

The Chair: To the witnesses. Thank you.

Mr Velshi: We have also had the Ontario March of Dimes. Again, I have their presentation. They say they support this bill for various reasons which I will not go into now. We had the Goodwill Industries, which supports it. We have the United Senior Citizens of Ontario supporting it. We have Richard Hsia, who is in charge of the no-fault comprehensive approach in insurance in New York state, who says that our bill is better than what they have there.

When somebody says that only the insurance companies are supporting it, I do not agree with that, and rightly so.

Yesterday we had two people making presentations to us, individuals, both of them were victims of accidents, and somehow we seemed to get the idea—when the New Democratic Party speakers say that every accident is caused by a drunk driver going 90 miles an hour in a Jaguar, that is not always true. Two people made presentations to us yesterday, and we have got their presentations also. Both of them, people like you and me, had accidents, not because somebody rammed into them; one fell asleep at the wheel, the other one skidded on ice. Both of them are disabled and both of them said that had this Bill 68 been in effect at that time, they would have been very much better off, to the tune of over \$1 million each, because this bill protects those types of people.

When we say they are guilty, those who are causing the accidents and those who are not causing the accidents, everyone is not a drunk driver. I know your situation is quite peculiar, and I think it needs looking into, so I am not going to argue on that, but there are certain parts of this bill that are very good.

I regret that the NDP member, Mr Kormos, starts off with a tirade. You come here, given up some valuable time to give us some input, and instead of asking questions, he goes off into a political debate. I do say am sorry for that, because we have come to hear what your opinions are and that is very important for us.

When he talks about the insurance companies donating money to us, I am one who has not taken money from any insurance company, only because they did not offer it to me, but here we have somebody from the Conservative Party who has taken money opposed to the bill, so I do not think it has anything to do with money, except in the mind of Mr Kormos, who somehow tends to equate donations with support. Maybe it is in his mind that he is supporting this bill because you have donated time and money to him. If that is the case, I find it difficult to understand why he is opposed to the bill. Is it because you supported him, or does he genuinely believe there is something wrong in the bill? His own integrity is in question here.

Mr Philip: Maybe it is because he read the bill.

Mr Velshi: Please, Mr Philip, I wish you would let me talk. I really wish you would let me talk.

Anyway, I am just telling you that there are other sides of this bill that are very important for individuals, like you and I, who do not drink and drive and have an accident, through no fault of our own, but not another drunk driver who rams into us. They are the nice parts of this bill.

What you have said I will definitely take into account. I am sure many others will also. I thank you for coming here.

Mr Jenkins: If I might, if my information is correct, the plan eliminates, for about 90 per cent of the accident victims, the right to sue. Perhaps the people you are discussing here are in the lucky 10 per cent and they will be able to do that.

In so far as the gentleman from the United States saying we have something better is concerned, we always have something better in Canada than the United States. On that I agree with him, notwithstanding this bill. That is all I have to say on that.

The Chair: Gentlemen, thank you very much.

Mr Sterling: Could I just have a point of clarification? I think in his response Mr Velshi said that I had indicated that every group in front of this committee except insurance companies had voiced objection. I believe I said virtually every group, and he has named five groups that are not insurance companies that have supported this bill, but the fact of the matter is we have heard close to 200 briefs, and for him to say five briefs in favour outside of the insurance companies is a pretty small statistic.

The Chair: I think it is a point of information. Gentlemen, thank you very much.

Next we have the Canada Safety Council. The clerk is distributing copies of your presentation. I believe also there is a package of material that will be distributed as well. I welcome you to the committee. If you would identify yourselves for the benefit of Hansard, we have half an hour. If you could leave some time for questions, comments and discussions, the committee would very much appreciate it. Please proceed.

CANADA SAFETY COUNCIL

Mr Therien: My name is Emile Therien. I am president of the Canada Safety Council. I am accompanied, on my left, by Jack Smith, our general manager of programs; and, on my right, by Ray Marchand, who is manager of our traffic section.

I would like to thank the standing committee for this opportunity to present the Canada Safety Council's perspective on the Ontario motorist protection plan. I will start out by outlining the council's position and give some background

about this council, its educational programs as they relate to preventive measures related to reducing motor vehicle collisions and two major initiatives to reduce accidents in high-risk age groups.

First, our position: The Canada Safety Council submits to the standing committee on Bill 68 that strong accident prevention programs are imperative to help the Ontario motorist protection plan succeed in its goal of making car insurance more affordable and accessible to all Ontarians.

Accident prevention is not specifically addressed by Bill 68, but it is highlighted in the promotional materials associated with the bill. The intent of our presentation today is to urge the government of Ontario and the insurance industry to work closely with the Canada Safety Council to improve and expand public awareness and driver training programs to reduce motor vehicle collisions.

The council is Canada's not-for-profit and nongovernment safety organization. Our mission or objective is to exercise leadership in the national effort to reduce death, injury and economic loss caused by accidents, focusing on traffic, occupational and public safety. A more extensive background on the council and its programs is contained in our information kits, which are presently being distributed.

Of particular interest to the issue of motor vehicle insurance is the fact that we are Canada's leading source of driver improvement courses. Among our many activities to improve traffic safety, we sponsor National Safe Driving Week every year; disseminate public awareness information; work behind the scenes on local, national and international committees addressing road safety; and hold conferences to address specific issues, such as senior drivers and drivers in the 16 to 24 age group.

The literature indicates the Ontario motorist protection plan will focus on two areas in the area of education: first, promotion of driver safety courses in the workplace; and second, public education programs to promote the use of seatbelts and daytime running lights.

I would like to note that in addition to the courses and public education programs I am going to talk about, the council's annual conference provides a national forum for major issues related to traffic safety. This conference will be held next year in Ontario, in the city of Hamilton.

I would like to outline our driver safety courses for you. At present this council offers many courses.

Its driver improvement programs include two defensive driving courses for the public and two professional driver improvement courses for commercial drivers. In addition to this, specialized programming is targeted to seniors, motorcycle and all-terrain vehicle riders and school bus and transit coach operators. You will find copies of student workbooks for these programs in our information kits. The courses are available throughout Ontario, some offered in workplace settings, some through the Ontario Safety League, some through driving schools and others independently.

0930

These are well-proven programs supported by the expertise of the Canada Safety Council, the Ontario Safety League and its network, and we have a strong instructor development and delivery mechanism. Our cadre of driver training programs continues to expand and existing programs are updated on a regular basis. Ongoing or new research provides an opportunity for the government of Ontario and the insurance industry to contribute to improved driver safety in this province.

With respect to driver safety courses, the Canada Safety Council urges the Ontario government and the insurance industry to provide incentives for graduates of such recognized driver safety courses, as is the case in many US states, such as New York and Texas. Complemented by mandated training for habitual offenders, we believe this will enable timely and cost-effective implementation of the education component of the plan.

Moving on to public education, the council's work in this area is widely recognized and far-reaching. It includes campaigns, public service interviews, media interviews, newsletters, a consumer safety magazine and frequent press releases on safety issues.

Our major 1989 priority was to promote daytime running lights. The anti-drinking-driving message and the wearing of seatbelts have been ongoing concerns since our inception over 20 years ago. Promoting seatbelts and daytime running lights and increasing sanctions on impaired driving and speeding—all very integral to your plan—in our view, will help reduce collisions. We would like to work with you in these areas, as they are of nationwide concern.

However, we believe that high-risk drivers are conditioned by other factors which must also be addressed. This is why in 1990 we will become actively involved in the issue of lifestyle

advertising. Our goal is to make advertisers more aware of the linkage between advertising and safety.

For example, some advertisements and commercials targeted at the youth market encourage risk-taking behaviour such as speeding or drinking. We believe these reinforce the already-too-high accident rate among 16- to 24-year-olds.

We also want to show the marketing benefits of a socially responsible approach encouraging safe driving behaviour. To this end, the council will be preparing a column on a regular basis for Pulse, the official newsletter of the Canadian Advertising Foundation, which reaches its 1,500 members and others. This effort will complement the Ontario government's public education objective. We hope you will endorse it and publicize the issue.

We sponsor several safety awareness campaigns in the public interest. Perhaps the best known of these is National Safe Driving Week, 1 to 7 December, which reaches Canadian drivers with a specific safety message every year. Over the past 34 years, this campaign has become a recognized Canadian tradition which draws extensive media coverage on safe driving.

Starting in 1989, the Canada Safety Council, together with the motorcycle industry association, has promoted the month of May as National Motorcycle Awareness Month, targeting motorcycle riders as well as the drivers with whom they share the roads.

These two public education programs can be made even more effective with the active support of the government of Ontario and the insurance industry.

Next I would like to say a few words about what we are doing with high-risk age groups. When annual kilometres driven are considered, motor vehicle collision rates by age group show that youngest and oldest drivers are most likely to be involved in a collision. We are sure these segments of licensed drivers will be of major concern in the new insurance plan.

The Canada Safety Council is taking major initiatives with these two groups, and we invite the government of Ontario, as part of its prevention strategy, to participate.

We held the first national seminar on strategic directions for elderly driver and pedestrian safety from 28 February to 2 March 1989. One of the goals of the seminar was to identify measures through which accident rates for seniors could be reduced. The report from this seminar is included in the information kits. Recommendations emanating from the seminar are in this report. We

urge the Ontario government to take these into account in developing prevention programs related to Bill 68. We are currently assessing action taken on the recommendations and what further action could reduce the accident rates.

We are holding a similar conference targeted to youthful drivers 14 to 16 in March 1990. This symposium will bring together young drivers, parents, educators, safety professionals, enforcement officers and others to develop recommendations for drivers in the 16 to 24 age group. The goal is to identify countermeasures or solutions with a likelihood of success.

As I conclude, I would like to mention that many of the initiatives of this council have been endorsed and supported by the Ministry of Transportation of Ontario and we hope this relationship will continue.

To summarize this presentation, the council wishes to register its view that the success of Bill 68 in the long run will be closely tied to the effectiveness of accident prevention initiatives. The public must be made more aware of how personal attitudes and behaviour can matter to drinking and driving, the wearing of seatbelts and motorcycle helmets, speeding and other road safety issues which directly impact on their insurance costs.

Some of the areas for co-operation which we have identified are: insurance incentives to graduates of approved driver improvement programs; mandated training for habitual offenders; shared goals and programs for public education; and serious consideration of recommendations emanating from council initiatives directed at high-risk age groups.

Thank you for the opportunity to contribute to this very important discussion. I believe that by working together towards our mutual goals, our council, the government of Ontario and the insurance industry can reduce motor vehicle collisions and keep insurance costs affordable.

Mr Philip: Thank you very much for an interesting brief. I can tell you that as a result of a similar brief in Toronto and as a result of the very tragic experience of sitting with deputants who are paraplegics, I know that I am going to take your defensive driving course. I have gone through your manual and I think you are doing an excellent job with this. And who knows? Maybe you have saved my life or that of my wife or family.

I have this question to ask of you. Although the government, in tabling its so-called research yesterday, did not table any kind of research telling us the cost of this legislation, a conserva-

tive figure is that this bill and the accompanying grants to the insurance companies are going to cost a minimum of \$143 million to the taxpayer. I ask you, as a safety council, do you not think that that \$143 million could be better spent in lifestyle advertising against irresponsible driving and in safety education and perhaps reduce the cost of automobile insurance by reducing the number of accidents?

Mr Therien: In answer to your question, I would agree with you. And make some of that money available to us.

Mr Philip: Mr Kruger, who is, as you know, the chair of the government's own Ontario Automobile Insurance Board, and John Bates, who is the president of People to Reduce Impaired Driving Everywhere, a very articulate gentleman who used to be the editor of *Bus and Truck Transport* magazine and some other interesting journals, claimed that at least statistically there is a correlation between this type of legislation and an increase in accidents. I have enough of a research background to know that simple correlations do not necessarily mean cause, but I am wondering if you have any comment on that.

Mr Therien: I have no comment on that. We have not researched or looked into that factor.

Mr Philip: If you had to place any one item that would reduce accidents, in your opinion, something that the government should do immediately, would it be in the field of lifestyle advertising, would it be in increased penalties? I realize that they are all a set of balances and counterbalances, but is there any one thing that, if you could wave a magic wand today and say, "I'd like this done immediately," you would do?

Mr Therien: I think the whole is greater than the sum of the parts, and the major cause of accidents, I would say, is speeding.

Mr Philip: So increased fines and greater enforcement?

Mr Therien: Enforcement is certainly the key, we believe.

0940

Mr Kormos: One wonders why the government would not address highway safety from a point of view of, well, highway safety. It would seem to me that there are a number of areas in the province, such as Highway 17 here in this area, that have been dramatically and tragically highlighted and that should attract immediate attention. That in itself would reduce the cost of insurance, and more importantly it would save lives and save people.

Why would you not propose a driver training and driver licensing system that did not just provide incentives for persons to take proper driver training, but that—the standards for licensing young drivers or new drivers in this province has not fundamentally changed in some 40 years now. Why does this province not adopt a model whereby before a driver can be considered for licensing, he or she must spend X number of hours behind the wheel with a trained, professional and licensed driving instructor. Surely that is so vitally important that merely to provide incentives is not enough. Should that not be a bottom-line requirement?

Mr Therien: Maybe I can deflect your question to our expert on this, Jack Smith, our general manager of programs.

Mr Smith: In response to that, I think there are minimum standards that do exist in ab initio training. Those standards, oddly enough, are established by the Insurance Bureau of Canada. Certainly any improvement in those standards would be welcome by the Canada Safety Council, as would increased standards in every province of the country.

Mr Kormos: Should those not entail a minimum number of hours behind the wheel with a trained instructor who could ensure that the person has been in highway situations, nighttime, daytime?

Mr Smith: My suspicion is that you are talking about a lot of hours, which would be very cost-prohibitive, not only to the individual but to government to implement.

Mr Kormos: Quadriplegics are not cost-prohibitive?

Mr Smith: I am suggesting that the current system does provide minimum hours behind the wheel, which is six hours. In six hours behind the wheel, anyone here who has been a driver who thinks back to when he was behind the wheel for six hours, he hardly wanted to be in high-speed skids, etc. If you are expanding the number of hours, you are going to have to do it considerably to cover all those things you suggest. If some training is good, I suggest to you that more training is better.

Mr Kormos: Yes.

Mr Marchand: If I may add, as you know the triangle of safety incorporates engineering, which is highway safety, enforcement and education. Our part has been primarily on education. What you are proposing there is a system similar to what is in effect in Quebec right now, where everyone who is driving a vehicle

must take training, whether it be motorcycles, cars or whatever. In that sense, yes, it is beneficial.

We go a step further in providing this. You can only fill a 16- or 17- or 18-year-old kid with so much knowledge to start. You base a solid base on which that person can then enter the street and gain some experience. We believe that driving skills are a lifelong apprenticeship over the years. People who have received their drivers' licences 20 years ago need to know what is new. There are new signs, new traffic control devices out there; they need to know.

Driver improvement that is oriented to the existing driver is built to provide the knowledge and attitudes to keep that safe driving record throughout life. It is obvious that for every one of us, every day we get into cars and it is an important part of living. That part needs to be part of the educational process throughout life.

Mr J. B. Nixon: Some people have argued that age is a proxy for education, and it is suggested thereby that the minimum age for obtaining a driving licence should be increased to, say, 18 or 19. What do you think of that?

Mr Therien: I guess you could argue either way. Certainly for a number of young people 16 years old going into the workforce, the success of that job impacts on the availability of that licence, so I think there are a lot of factors that would have to be taken into consideration.

Mr J. B. Nixon: I do not believe Ontario does now, but I think in the past it used to allow you to obtain a driver's licence at 14 if you were in the farm community, so there might be exceptions that could be allowed. Assuming that matter could be handled, what would you think of increasing the driving age?

Mr Therien: Asking that on a personal basis with two teenagers, I agree. I do not know. I think it is something that would have to be researched. If we look at statistics from 16 and 19, if you look at the number of accidents per 1,000, the 16- to 19-year-old group have a higher number of accidents than the 20 to 24, so it just goes on and on. You use those figures and argue that probably the minimum age should be increased, but to answer that question, I think we would have to research it. You would have to get attitudes. You would have to ask young people how they feel about this. This is one of the objectives of a seminar we have coming up in March. I think it is very important to ask young people what they think before you legislate something that essentially shoves it down their throats.

Mr J. B. Nixon: Absolutely. I was just looking to you for some advice. The other question of course is raising the drinking age. What are your views on that as a matter of safety related to driving?

Mr Therien: I think it is a question of either raising the drinking age or the availability of liquor and beer products. Raising that age will not necessarily be a deterrent to getting it. I think you have another multiquestion that would have to be researched, but I agree basically that—again it would be from a personal basis, having two teenagers. I am sure a lot of parents feel like me, but I do not think we could just sit here and say, "Yes, it is the answer." I do not think it is.

Mr J. B. Nixon: I am not suggesting it is the answer. I very much appreciate the work you are doing in terms of lifestyle advertising, education and so on.

Mr Therien: In answer to your question, on lifestyle advertising and increasing the drinking age, we would certainly welcome the involvement of more brewers, the brewing industry in this province, in some of our programs. We would certainly welcome their resources and their money.

Mr McClelland: Very briefly, gentlemen, thank you again for being here this morning. Just for the information of one of my colleagues I would like to know where the youthful drivers symposium in March will be held, and then I had a question.

Mr Therien: It will be here in Ottawa.

Mr McClelland: One of the things we have heard about, having talked to some brokers and insurance companies, is the difficulties they have with the chronically bad driver, the individual who consistently goes out on the road, sort of the turnstile fender-bender offender, if you will. I wonder if you might have some comments that might be useful as we look at this. There is certainly the deterrence of high premiums, certainly now the nonavailability people ending up being put into the Facility Association and so forth. I am sure you have turned your minds to that issue, something that, quite frankly, I do not know that there is an easy answer to. I would be pleased if you had any suggestions on what we might consider with respect to that chronically bad driver who is back again and again with anything from small to medium accidents in terms of severity.

Mr Smith: It is an interesting question and one, you are right, that we have turned our minds to many times. I currently sit as chairman of an

international driver improvement committee out of Chicago. A number of United States states have adopted habitual offenders programs. We are currently coventuring with the National Safety Council in the USA an habitual offenders program to address that very issue.

What we are finding—there has been a lot of research done, not in Canada but external to Canada in North America, that indicates it is an attitudinal problem. You get someone for impaired driving and often the majority of Canadians—we know that one third of all Canadians, for example, are abstainers, so 66⅔ per cent of all Canadians drink, and of that number who drink I suspect a large number at one time or another have driven after drinking. You get someone who is picked up for an impaired driving charge once and the feeling of the majority of Canadians and Ontarians, I would say, would be, “There but for the grace of God go I.”

Unfortunately, when that same person gets picked up two and three times that person has a problem. It is an attitudinal problem and it is not an easy one to address, but there is research ongoing in North America to which we are privy, and I would suspect some time in 1990 or 1991 at the latest we will have in place an habitual offenders program. The success of that needs to be tracked.

Mr McClelland: Thank you, and might I just say for all of us, I want to say a word of encouragement. Thanks for what you are doing for the people of the province and indeed the country.

Mr Smith: Thanks very much.

Mr Velshi: This is something you made a statement about here, that the youngest and the oldest drivers are more likely to be in an accident.

Mr Smith: Yes.

Mr Velshi: I do not have the figures with me but I remember somebody else making a presentation to say that the older drivers, the seniors, are the least likely to be in an accident. Now if there is no immediate explanation I would like to have some figures from you.

Mr Therien: The quick answer in terms of the number of seniors—and correct me if I am wrong here—is that the number of kilometres driven by seniors decreases with age.

Mr Marchand: There is also a different type of accident that seniors get involved in. It is most likely to be failing to yield the right of way. Quite often those are related to eyesight problems or hearing problems and so on, and that is what the

mature driver program tries to address, to help them to cope with the changes in their physique so that they can continue to drive and stay accident-free, because it is important to their mobility.

The Chair: Gentlemen, thank you very much.

Professor David Slater, your presentation has been circulated to the committee members. We have approximately half an hour. If you could allow us some time for some questions, comments and discussion, that would be useful as well. Please identify yourself for the benefit of Hansard and then proceed.

0950

DR DAVID W. SLATER

Dr Slater: I am David Slater. I am formally retired from my last full-time job as chairman of the Economic Council of the Canada. I still keep my hand in and at the moment I am spending much of this winter as the Skelton-Clark visiting fellow at Queen's University. I have been mainly a university professor in my life, but also a public official and all sorts of other things.

I will speak to these notes and not read them all. My interest in insurance was focused only a few years ago by chairing the Ontario Task Force on Insurance. The central problems then were liability insurance, product liability and things of that sort rather than auto insurance, but auto insurance is such a big piece of the total story, affected such a large proportion of the citizens of Ontario and had some symptoms of growing problems that we had to look at that subject. Since then I have followed most of the reports including the bill, the Ontario Automobile Insurance Board's work and so on.

In the 1986 task force report, it was recommended, to paraphrase, that first-party no-fault compensation for loss of income, rehabilitation and care should be fundamentally improved in Ontario. It was also recommended that consideration be given to limiting, perhaps by a threshold, the resort to tort suits for compensation for bodily injury. I made some recommendations about layering and about bonus malus systems and things of that sort.

As you know all too well, Bill 68 proposes amendments to auto insurance in Ontario that are much like my task force proposals, though much more carefully worked out because there has been three years plus of additional careful thought given to the subject.

I thought the thing that might be most useful to the committee would be for me to ask whether with another three years of experience I would

modify in some significant way the kinds of arguments and conclusions I came to, and that is what I will do.

The first major topic I address is the improvement in the first-party no-fault compensation for bodily injury arising from automobile accidents. My examination in 1986 led me to conclude that such compensation and systems for determining and delivering it were inadequate, unfair, inefficient, tardy, uneconomical, needlessly involving hassles and litigation for the clear majority of the population of Ontario.

The principal reason, I believed, was the deterioration since 1978 in the real value of the first-party no-fault benefits for income replacement, the lack of efficient layers of optional insurance beyond the minimum and inadequate levels of compensation for rehabilitation and care. These shortcomings had created a situation in which the majority of ordinary citizens were increasingly resorting to the tort litigation system to obtain reasonable compensation. Indeed, you could almost say that because the no-fault compensation was so poor, people, ordinary citizens, were virtually being driven into the hands of the tort litigation system to get any reasonable kind of settlement.

The automobile insurance industry was becoming less and less user friendly. The public was increasingly drawn into the processes of litigation, though for the most part not proceeding all the way through to trial, and the litigation bar was rather encouraging some of these developments, as I saw it.

I then went on and I found that after adjusting for inflation, the outlays for compensation for bodily injury were trending up at rapid rates. If you make a careful analysis of the green book material, I think you would still reach that conclusion. Also, the total compensation for bodily injury from automobile accidents was not being increased primarily or directly by large settlements. The real driving force was the increasing numbers of small and medium-sized settlements at that level. The processes by which these results were being generated were slow, costly, uncertain and confrontational, and they were the most important factor in driving up automobile insurance rates in the long term.

We have had another three years without improvement in the nominal value of the first-party no-fault compensation for bodily injury from auto accidents. Indeed, in real terms we have had another three years of deterioration of the real value of those benefits. Thus, in my view the performance of the system is worse

today than it was in 1986. The Osborne report and the auto insurance board's work and the reference they had strongly support massive improvement in such compensation, and the general principles of these features of Bill 68 deserve strong support in my view.

There are several questions still about the first-party no-fault compensation. First, are the levels of compensation adequate and the processes and criteria for future adjustment reasonable? The minimum benefits are intended to meet the income replacement for the majority of citizens of Ontario, not those receiving or expecting high incomes. I think this is the proper approach. However, the fit of the compensation program to people with different income positions and expectations is dependent on the availability, in economical and efficient forms, of extra layers of insurance for compensation against bodily injury. Bill 68 appears to facilitate such layering.

Second, it is contemplated in the bill that the no-fault compensation schedule will be adjusted to reflect inflation, with a cap. This would overcome the worst flaw in the previous arrangements. However, the adequacy of the schedules should be reviewed periodically and the bill might strengthen such provisions.

Third, there are questions whether the compensation is adequate for students, unemployed, older persons and so on. If in the opinion of the committee some improvements in benefits to provide compensation for particular groups are desirable, changes can be proposed that will not alter the fundamental attractiveness or viability of the proposed system. In particular, there appears to be a consensus that the death benefits for persons with dependants are inadequate. The insurance board's reference shows that these could be improved for small additions to the average premiums.

Fourth, there appears to be a consensus that even though the compensation for rehabilitation and costs of care have been enormously improved in the government's proposals, the limits are still too restrictive. I think the examination of the Michigan system and the pooled reinsurance arrangements there show that this problem can be dealt with effectively and for reasonable cost.

Fifth, there is the question of no explicit provision being included in the first-party no-fault compensation for pain and suffering. Many reasonable people feel that some such compensation should be made. Such arguments could be met in either of two ways, by including a pain and suffering element in determining the main compensation schedules, or alternatively, having

no-fault pain and suffering compensation as part of the overall package. I think there is enough evidence about the pain and suffering awards to establish reasonable standards for figuring out what those schedules might look like.

I would add one more point about the first-party no-fault compensation, and that is the issue of ensuring prompt, generous, no-hassle payment of first-party compensation. The Reference of the auto insurance board shows the necessity, I believe, of reform of attitudes and practices of insurance companies and of public means of ensuring prompt payment of those benefits.

1000

We turn then to the second major question, which is the issue of restrictions or choice on the use of tort/litigation in addition to improvement of first-party no-fault compensation. It seems to me the most vital thing to do, if you do nothing else, is to improve the first-party no-fault benefits in the Ontario system.

As you know, there is a whole series of options with respect to the tort/litigation side of things: the status quo; the Michigan arrangements, which I think are the closest pattern to the Bill 68 proposals; restrictions of the use of tort/litigation rights but less severely than the Michigan model, for example New York, and the most important difference there is that fractures are a basis for suit; no use of tort/litigation rights, as in Quebec; and/or a choice no-fault system.

I did not look at the choice no-fault system and Bill 68 does not include that.

As I looked at the thing, although there is some degree of interdependence between the richness of the first-party compensation program and the degree of restriction on tort/litigation rights, the interdependence is far from complete. As a partial relationship, the more the restrictions on tort/litigation rights, the more generous is expected to be the no-fault program and vice versa.

In part, this is the tradeoff of costs which was examined in the Ontario Automobile Insurance Board Reference. But the tradeoff of costs, as I see it, is not the only consideration in designing a system. In part, it is also a matter of social valuation, of bases of compensation, such as that for minor soft-tissue injuries, against psychological pain and suffering from somewhat more serious injuries, for example. In part, it is a moral valuation about punishment of people who are subject to some blame, however slight.

It seemed to me that there are no absolutes in these tradeoffs and interdependencies. I came to conclusion that the improvement in the first-

party no-fault benefits was the most important thing to accomplish. I believed that it would be possible to improve the benefits for the great mass of Ontario citizens and to do so economically, though I recognize that there might very well be some increase in the costs of providing those benefits. That is, the efficiency gains of a changed system may not be sufficient to compensate for the increased costs of the benefits.

I came to the conclusion that I would be perfectly content to live with even the existing status quo with respect to litigation if that was the choice and even if that meant higher insurance costs, bearing in mind the improvement in the first-party benefits, providing that the system was fair and efficient.

When I considered including some restrictions on the use of tort/litigation rights, my concern was whether the losses arising from such restrictions were substantial and fairly distributed compared with the gains of not making such restrictions. I acknowledged that some persons gain by being able to make full use of the tort/litigation rights. I acknowledged that there is a sense of justice accomplished in punishing wrongdoers.

I acknowledged that there is some deterrent effect from substantial visible penalties being applied to wrongdoers. I did not think the deterrent effects were very large, but that is another matter. I acknowledged that the Canadian social, health care, judicial system and legal practice are sufficiently different from those in the United States to make abuses of tort/litigation rights much less likely and, when they occur, much smaller than is typical in the United States.

Having made all these acknowledgements, the question still remained as to whether unrestricted use of tort/litigation rights with respect to bodily injury from automobile accidents is worthwhile and fair. To put it another way, are proposed threshold restrictions worthwhile and fair, bearing in mind that there is no free lunch in these as in most other affairs of society?

I became convinced that most automobile accidents are just the luck of the game with very little elements of fault in play. I became convinced that determining and assessing blame was a highly imperfect and uncertain process for the most part. To make tort/litigation a central element of determining compensation and responsibility for compensation seemed to me an unsound basis for a society in which the choice of participating or not in the risks of exposure to auto accidents is virtually nonexistent.

Persons who deserve compensation may or may not get it. The process is lengthy, costly, full of play-acting and highly uncertain of outcome. The deterrent effects are doubtful. Through taxation of the proceeds from lump-sum settlements, federal and provincial governments are principal beneficiaries of such awards—improperly in my opinion, but that does not count for very much. Like a lottery, the chance of a large prize from litigation has had demonstration effects which encourage resort to the litigation system more generally. I became convinced that unrestricted use of tort/litigation rights in this field yielded marginal benefits at best, and at high costs.

I also remain unconvinced by the arguments that the legal and transactions costs of the existing arrangements are as small as the plaintiff's bar keeps suggesting. Mr Justice Coulter Osborne's estimates of party and party costs of counsel in cases settled by trials appears to be a substantial underestimate of the legal costs of the existing system.

Though the evidence is mixed, a number of estimates in the boards' Reference support my view that the legal and transactions costs of the existing system use up a significant portion of the premium dollar. I believe, too, that legal practice in bodily injury cases is much closer to a contingency-fee basis in Ontario than most lawyers like to admit. I observe that the fees for expert witnesses—a number of my friends are in that game—to the tort/litigation process have increased significantly in recent years.

In my notes, I also refer to the question of whether reform of the tort/litigation process itself, such as the Canadian Bar Association—Ontario suggested or as Mr Coulter Osborne suggested, would remedy the situation, I think many of those improvements are desirable but I do not think they go to the heart of the problem.

In the end, however, while I preferred severe restrictions on tort/litigation rights for bodily injury from automobile accidents, I came to the view that such extreme restrictions were probably not acceptable to Ontario citizens. In particular, Ontario was not ready for a New Zealand-type disability and compensation arrangement.

Thus, I recommended the fallback position of verbal threshold limitation on such rights, roughly as they have appeared in Bill 68. I also strongly recommended the introduction or strengthening of bonus-malus systems to encourage good driving and discourage bad driving

and made some other recommendations about monitoring costs and so on.

Thank you very much. I would be pleased to respond to questions.

The Chair: I have Mr Philip, Mr Kormos, Mr Nixon, Mr Sterling. Mr Philip or Mr Kormos for up to five minutes.

Mr Kormos: Let us know when we have a couple of minutes left.

Mr Philip: I guess you will forgive me, but being chairman of the standing committee on public accounts, New Democratic Party critic on government spending and having a business background I approach legislation very narrowly. I approach it with just two questions: what is this legislation going to cost the taxpayer and what are the benefits?

The benefits, one would hope in any kind of legislation affecting insurance, would be a reduction or a holding steady of premiums—at least a reduction in the escalation of premiums. The government has been unable or unwilling to table any kind of research indicating the exact cost of this legislation. We are told that in terms of giveaways to the insurance companies we are talking about \$143 million, but that may be very small if one adds in the increased costs to workers' compensation and other things that are indirect taxation on the public.

In terms of benefits, the government yesterday refused to table information that would indicate what premiums are going to be next year, although the minister has given estimates that range anywhere from eight per cent to 50 per cent premium increases.

I ask you, can you tell us, in all of your studies, what is this very bureaucratic legislation going to cost the taxpayer? Or can you tell us if there is any evidence that this legislation will actually reduce premiums?

1010

Dr Slater: First of all, there is a question of improving benefits and reducing premiums. One has consider both. As you can see from my remarks and, indeed, from the earlier work, with respect to an ordinary citizen of Ontario, I have put a lot of weight on improving the benefits, especially income replacement and, very especially, rehabilitation and care. I think we fall very much short in good standards of compensation and good and prompt rehabilitation treatment.

I personally believe that the compensation to people from the first-party no-fault benefits will, in total, increase and if that was all that was to happen it would drive premiums up. I believe

there will be and there can be some saving in efficiency gains, but I think the analysis done by the Reference for the auto insurance board suggests that it really is unlikely that the efficiency gains will be so large as to offset the increase in the cost of providing what I would call good first party no-fault benefits.

Mr Philip: What I hear you saying, sir, is that you do not have figures on what this legislation is going to cost the taxpayer—and that is the cost whether it is paid in premiums or whether it is paid in direct tax dollars—and that indications are that premiums are still going to increase. Is that correct?

Dr Slater: I think the most careful piece of work on this was done in a reference group in response to the Reference from the auto insurance board. They had that big, fat study and they had consulting firms, actuarial firms, and so on. As you know very well, the game of figuring out costs and premiums in actuarial exercises, where your data are really kind of shaky, is, at best, a matter of judgement.

The judgement that I came to, based on my own work and on the basis of the Reference study, was that it is likely that the cost of the benefits of the first-party no-fault benefits compensation will be larger; there will be some efficiency gains; there will be and certainly can be some significant reduction in the use of tort/litigation processes; and it should be possible to have far more friendly and prompt payment settlements, but by how much, I do not know. I do not believe on the basis of that evidence that you are talking about gigantic increases in the costs.

I think there can be some savings if fewer tort/litigation processes go all the way through to trials. I do not know how big those savings will be, in part, because we have such terrible information on what is going on now and what the costs are. I have put enormous weight on the matter of giving a better set of protections to the majority of Ontario citizens even if it costs a bit more.

Mr Kormos: Listen, your name has been bandied about in the course of this committee just an incredible amount. There are Slaterites at Queen's Park. You are the leader of a cult. They may not be too pleased with what the cult leader had to say today because it does not quite jibe with what they have been advocating.

Mr Justice Osborne indicated, apologetically, that he could not appear in front of the committee because of his current status, understandably so. Listen, your report has been around for a good

chunk of time. I am curious; when David Peterson promised back in 1987 that he had a very specific plan to reduce auto insurance premiums, do you think it was your proposal that he had in mind, because it has been a long time coming. How do you reconcile the conflict between your findings, in excess of 10 years ago now, in a study that did not focus primarily on auto insurance, and the findings of Mr Justice Osborne who did focus on auto insurance and, indeed, the findings of John Kruger about this type of threshold system, which did focus on auto insurance?

Mr J. B. Nixon: Ten years ago? This is called hyperbolic licence.

Mr Kormos: Their findings, of course, reject this proposal; yours would come closer to embracing it.

Mr J. B. Nixon: This report was 1986.

Dr Slater: Yes, my report was in 1986. I think one of the difficulties in sorting this out is the difficulty of understanding and interpreting the costs of running the system we have got. We have got very little data.

At the time when I was looking at this, as you know, there was a kind of a widespread belief that Ontario, in all insurance matters, was becoming a California of the north and that often everybody was going to be getting into litigating on everything. The pilot fish of the whole thing from both of us was auto insurance and so on. Looking back on it, I think there was a bit of an exaggerated notion of how much savings there would be out of going to a no-fault system, which is a mixture of a first-party improvement of benefits and some reduction of the costs of the process of that whole litigation/tort process in which I think some of the big settlements were establishing quite a sense of panic.

Mr Kormos: Granted, but it never came through.

Dr Slater: My view is that with another three years of experience there will be a little less panic about the litigation process and its costs and I think a little less confidence of huge efficiency gains out of, in effect, substituting first-party benefits for the most of us instead of having tort/litigation process benefits for most us.

Mr Sterling: Thank you very much, Dr Slater, for coming in front of the committee. One of the remarks you make in your paper is that you expect the insurance industry to go into a layering process. Do you think most people in Ontario who are aware of the limited no-fault benefits

will seek additional insurance to cover a loss of income as a result of an automobile accident?

Dr Slater: I would think people in middle- and higher-income brackets and income expectations. One of the most impressive pieces of evidence in support of that is this; I asked the question: "Did the people in Quebec, more or less, like the no-fault system that they had and if they did like it, why? If you were a young doctor or a concert piano player, etc, how could you be satisfied with a schedule of benefits under the Quebec no-fault system?" The answer turned out to be that because of some traditions in insurance arrangements in Quebec, a very large fraction of people who were in better-off professions and so on, through group programs have income protection over and beyond the income protection and so on that is given under the Quebec no-fault auto insurance thing.

One of the reasons why people do not find it difficult to live with the first-party benefits in Quebec is what really amounts to a layering on top of that for a large part of the population. It is not just that there be a layering but that it be efficient and cheap and it dovetail in with the system quite well.

1020

When I did the work in 1986, one of the questions I asked was whether there was an economical way of a person of high-income expectations protecting himself over and beyond whatever the no-fault benefits were. The answers I got were that, by and large in Ontario, the systems available for layering at that time were limited, inefficient, costly in administration and so on and that therefore they were not much good.

I think one of the things that Bill 68 does is not only point to but almost insist that layering arrangements that are efficient be available. I would think that if the insurance industry does not respond to that, they will be doing a real disservice to people.

Mr Sterling: In other words, you are saying to me that I am not only going to be faced with an auto insurance premium, but the average middle-income or high-income Ontarian is going to be faced with another insurance premium as well. I might save \$100 on my car, but it might cost me a lot more than \$100 for the kind of protection you have now under your automobile insurance.

Dr Slater: I think that is very likely.

Mr Sterling: Second, I would like to ask you whether or not you had much look at the United States' experience in no-fault when you were

making your recommendations. We have had evidence in front of the committee that there were 18 states with no-fault plans. Two have withdrawn. Most of these plans were brought out in the 1970s, and in virtually every case, the premiums for auto insurance in the no-fault systems are greater than in the other states where they have fault systems. Would you affirm that observation?

Dr Slater: I certainly did look at and get some evidence on the American systems. My work was squeezed into about four and a half months, so there was a limit to what I could do, but I did have some of the American insurers who also operate in Canada, such as State Farm and Allstate, come up and provide us evidence, because they are operating over many of the states.

It may very well be that in some of the no-fault states premiums are higher. What one has to do, though, is to be very, very careful that you are comparing apples and apples in that business. As you know, comparing auto insurance premiums in Saskatchewan and auto insurance premiums in Metropolitan Toronto is not a fair comparison at all.

I think one of the things that really did impress me was the promptness and the sense of adequacy and the sense of fairness in terms of compensation that people in a state like Michigan were getting. The thing I heard about more often than anything else was the success of the rehab part of their program, certainly in contrast between Ontario and Michigan. It seemed to me that almost the worst comparison was the miserable treatment of rehab in Ontario compared with what was done and what was possible in an adjoining area.

Mr J. B. Nixon: Dr Slater, thanks for appearing today. I will tell you why I am pleased. Let me give you an example.

For some time now, the opposition has been saying, "Whatever the government's been doing, they don't have any actuarial analysis and it's entirely bogus and a sham." So yesterday we produced 39 actuarial reports, and the opposition said, "Oh, my God, what are we going to do now?" They started dumping on the reports, not having read the reports. Then they said: "Well, no one's ever written about this so-called threshold no-fault. No one's talked about what you're doing." Now you appear before us and the opposition members, particularly from the NDP, are sort of running and hiding and talking about Slaterites versus Osbornites and so on.

Mr Kormos: You lied again. And the emperor has no clothes.

Mr J. B. Nixon: They are saying right now the emperor has no clothes. Sir, you are wearing clothes, and I welcome you to this committee.

Mr Kormos: It is you that ain't got nothing, Bradford.

Mr J. B. Nixon: In your testimony, you talk about Mr Justice Osborne. You say his forecast of a peaking of bodily injury frequency after 1986 has not been fulfilled, at least as indicated by claims of compensation for bodily injury.

I agree with that and suggest that at some point you and Mr Justice Osborne converge and have a similar view, because Mr Justice Osborne was called before the Ontario Automobile Insurance Board during the reference and it was put to him that the claims experience was increasing exponentially, the cost of the claims was going up, premiums were going up. Asked what he would recommend, based on this new view of the evidence, he said, "Well, in my view, something would have to give." Those were his words.

The only area he could see in terms of giving was in the third-party bodily injury compensation levels. That was his suggestion, which is slightly different from your views as to where the give should be. Any comments?

Dr Slater: Mr Justice Osborne did a very thorough piece of work, particularly on the dispute resolution issues and all the rest of the stuff. He also made a real effort to form some judgements on the basis of actuarial evidence and things of that sort, but it is a little like my trying to form some judgements on particle physics. You know, you can get beyond your depth, but he did make an honest effort there. I think he believed that this process of escalation of litigation had reached its limits.

I made a point, in preparation for this committee hearing, to get the latest green book material and so on and examine the last couple of years, and it is clear that has not happened. One could hardly expect it to happen when, as I indicated in my remarks, the real value of the first-party benefits are worse now than they were three years ago. If you were wanting to get some reasonable settlement now, you are even more likely to be driven into the tort litigation process to do that, so in that respect I think Osborne and I are really on all fours.

I think it is fair to say that Mr Justice Osborne, like a very good lawyer and good judge, treasures the values of a tort litigation system, but in his report he put enormous emphasis on improvement in the first-party benefits.

The Chair: You have got a minute and a half, Mr McClelland.

Mr McClelland: Thank you for being here this morning. Just by way of information, I wanted to mention to you that we have had testimony from at least one insurance company that it has costed layering and has prepared a package for the consumer in the eventuality that Bill 68 does pass in its present form.

There is one thing that you have touched on, quite frankly, that I suppose is much too philosophical and esoteric for the 90 seconds that we have left. I will tell you that it has been sort of the gut-wrenching—if I can use that expression—struggle that I have been going through with this bill. I suppose it ties in somewhat with the comment that you made about Justice Osborne with respect to the tradition of the tort litigation system that we have in our society.

You said on page 5 of the notes that you submitted with respect to your brief, "There is a sense of justice accomplished in punishing wrongdoers." I will paraphrase that, if I can, by saying there is a sense of justice accomplished in the tort litigation system.

Further, at the bottom of that page you go on to say that you think that generally the system, philosophically, if you will, is "an unsound basis for a society" where people are thrown in with virtually no choice or no option in terms of relying on that process.

I say to you, sir, that has been the problem I have had, and to this point I have come to the conclusion that there is an element of retribution in the adversarial process.

1030

If as a society we can make a philosophical shift away from that to making people whole again—you mention the Michigan experience—putting them back into society as productive members of society, and if it is a counterbalance, to use the expression that my friend Mr Philip uses, a system of balances and counterbalances, and that is the route we are going in society, I see that as a reasonable tradeoff. I see that as a reasonable giving up, certainly, and there is no question that we are giving up an element of the tort system that allows for pain and suffering compensation, but what we are giving on balance is a right for people and an emphasis on people getting back into society, rehabilitating them, making them effective and useful members of society again. I can live with that.

I appreciate the fact that you have touched on all that. It was certainly not the nature of the presentation to get into the philosophical or

esoteric position on that, but you have certainly made reference to that and I want to say that I appreciate that, because it has been the most difficult and pivotal issue I have had to wrestle with in my own mind. It is useful to look at it from your perspective, from an actuarial basis as well.

The Chair: Dr Slater, thank you very much for your presentation.

Dr Slater: It has been a pleasure and I wish you well doing Solomon's job.

The Chair: From the Security National Insurance Co we have Mr Thibault. Gentlemen, have a seat. The clerk has distributed copies of your presentation. If you could leave us some time for questions, comments and discussion, we would appreciate that. You could also identify yourselves for the benefit of Hansard and then proceed.

OPTIMUM FINANCIAL CORP

Mr Thibault: I would like to thank the committee for giving us the opportunity to come to present our views on the government's proposals.

I would like to make a small change to the name of our company. Originally I registered Security National Insurance Co, but after discussion with my colleagues, we would like to make a presentation on behalf of our whole group of companies, which includes Security National Insurance Co.

My name is Alain Thibault and I am here as senior vice-president of the Optimum Financial Corp. I have asked my colleagues, Pierre Paquette and Paul Mercier, to join me if you have questions that are more related to their own area of responsibility.

If you would allow me, I would like to say a word about our company, because I would say we are in a way a relative newcomer in the national insurance scene as an insurance company. The Optimum Financial Corp includes Security National Insurance Co and Optimum Financial Services Ltd. We form a group of companies that sells personal auto and personal home insurance throughout Canada. We have always been in the brokerage field. As well, now we also include underwriting activities. So we have always been close to our clients and we are not selling insurance through intermediaries, we have direct contact with the Ontario public.

In 1989, we were serving about 120,000 clients, including 45,000 in Ontario. The premium revenue from these operations amounted to

\$114 million, of which almost half, \$54 million, was from Ontario.

Our history goes back 40 years, when we started as a very small insurance broker in Montreal, but we have extended gradually and in 1988 we acquired an insurance company and now act as insurance companies. Our presence in Ontario goes back to 1973.

If I may now comment on the proposals themselves, the Optimum Financial Corp is in full support of the major initiatives of the government of Ontario to improve the delivery and control the costs of auto insurance benefits. We think the proposals offer a sensible and balanced solution to the deficiencies of the present compensation system.

We really approve of the mixed system of increased no-fault benefits for every victim of an automobile accident on one hand, and also maintenance of the tort recovery for the seriously injured.

We approve of the increased measures that are aimed at bringing down the number of accidents on the roads, because we believe that, no matter what compensation system is in place, the human waste associated with automobile accidents is so terrible that everything has to be done to reduce it in the first place.

Finally, we support the proposal to merge the roles of the Ontario Automobile Insurance Board and the superintendent of insurance. We think this is needed to provide the public with a greater assurance that the system will work and that the companies will deliver what they are asked to deliver and also that premiums will be kept in line with the costs of automobile benefits.

I would like to comment a little further on the compensation system itself, and some of this might be repetitive for you members, but we think these points are important.

The major reasons why we are in favour of the reform of the compensation system that has been proposed is, first, we strongly support the reliance on increased first-party benefits as the keystone of indemnification of automobile insurance victims. We feel that today, unfortunately, there are too many people who receive totally inadequate benefits because they are not in a position to prove somebody else's negligence. This more often affects those who are less prepared to face these tough situations, such as young people, who have no other source of disability insurance.

We believe the system will be very much improved and that it will accelerate the payment of indemnities for the more urgent economic

needs of all accident victims. We think this is important because, in many cases, access to these benefits at an early stage may be a key factor in a victim's recovery and return to a productive life.

Level of benefits: We think they are fair and reasonable as proposed. We think they will be sufficient to adequately cover the needs of the vast majority of Ontario workers. I do not think mandatory benefits should be set at a level that protects everyone fully. We think that those who have higher-income levels should be allowed to buy extra coverage and we should not require other people with lesser incomes to pay for that.

We at the Optimum Financial Corp will endeavour to advise our clients and to promote this extra benefit coverage. If we look back at what happened in Quebec many years ago, our own experience will prove that we do not expect that many people will buy it, actually, because we found out that people with higher incomes usually have other forms of disability insurance and there is not really that much need, but we will allow for it anyway. We had a big program 12 years ago to promote these benefits in Quebec and we did not sell very many policies.

The system will maintain access to tort recovery for serious injuries. We are in favour of this, because we believe that tort provides an opportunity for complete assessment of someone's loss, pecuniary or nonpecuniary, which takes into account all the personal circumstances. In many cases, it introduces an element of fairness that is appealing. The problem with the tort system is that it is totally inefficient and costly to treat the large number of smaller injuries that result from most automobile accidents.

We think the choice to retain some form of tort recovery is a sensible approach. It will provide the people involved with the opportunity to recover benefits in excess of the wage replacement benefits that are proposed as accident benefits, and also to recover some benefits that are intangible in their nature, or damages that are intangible in their nature, because they do not lend themselves very well to the requirements of this schedule approach.

We also support further enhancement of the current tort system, especially in the area of promoting structural settlements.

Criminal Code offences and alcohol-related accidents: It is our understanding that drivers who were impaired at the time of an accident or committed a Criminal Code driving offense be denied income replacement benefits. While we do agree that strong measures have to be taken to

take these people off the roads, denying income replacement benefits may appear attractive initially from a public policy standpoint.

1040

However, we think this is very severe punishment. Quite often it is not necessarily the driver himself whom we would be punishing, but it will be the family or members of the family who depend on that person for economic support. We would like to propose a certain compromise to the current proposal. We think that drivers who were impaired or those who committed a criminal act should be denied income replacement benefits but only for a specified period of time.

For instance, if we set that period of time at six months, we would effectively eliminate a lot of the smaller claims, but at least for those people who are seriously injured, there will be still a source of financial support after that substantial delay. We think the lifetime punishment is a harsh sentence for any type of unpremeditated offence.

The secondary source rule: We know that it is proposed that the accident benefits be paid in excess of an injured person's employer-provided disability insurance, up to a total indemnity equal to 80 per cent of that person's income. We agree with that proposal. We believe that automobile first-party benefits as well as group insurance disability benefits will be more efficiently and economically provided if this secondary nature of auto benefits is retained.

Group life insurers have developed very sophisticated administration systems to handle hundreds of thousands of cases and they rely on the employer as a primary source of information usually to handle the cases, at least the smaller cases, but these systems may not always lend themselves easily to handling unusual circumstances and exceptions. For instance, we do not believe that many life insurers are using their subrogation right to recover the damages that are being paid to automobile insurance victims by automobile insurers. In many cases we believe that this results in people recovering more than their wage loss because they receive it from two sources.

If we make automobile insurance secondary, we will retain the most efficient way of servicing the majority of victims, which is through their employment. That will avoid the auto insurance, in many cases, to duplicate the work that will already have been done by the life insurer.

In the case of long-term disability benefits, auto insurance will serve to complement the

group benefits, because the long-term disability plans usually cover 50 to 65 per cent of gross income, so automobile insurance will fill a substantial gap to bring that up to 80 per cent.

Life insurers have developed also expertise for severe cases and for providing rehabilitation services, so we think it is sensible to continue to allow automobile victims access to these services while we rely on automobile insurance to improve the total compensation.

We are in favour of the inverse liability system for property damage. We think it will bring increased efficiency in the handling of claims and that it will allow for a more equitable distribution of insurance premiums between the drivers who drive more expensive vehicles and those who have older or less expensive models.

Tort as an accident deterrent: Some people have claimed that the number of accidents should increase because we will remove tort as a deterrent. We do not subscribe to that point of view at all. I believe the minister has talked about this before to your committee. But if we look at the empirical evidence from Quebec over the period of 1974 to 1988, that would suggest that no-fault system has had no negative impact on accident frequency.

If we look at the accident frequency for that period for Ontario and for Quebec for collision losses—and these are not bodily injury losses but I expect they are strongly correlated because most bodily injury losses would involve damage to a car at the same time—what we see is that the accident frequency in Quebec for collision has dropped, and it has dropped somewhat more than in Ontario, if we compare before and after the new system.

Finally, a word about the role of the commissioner of insurance. We support the merger of the Ontario Automobile Insurance Board and the office of the superintendent of insurance. The commissioner will receive very broad powers to enforce the provisions of the act, and ensure that the automobile insurance industry fulfils the expectations of the Ontario public.

We do hope, however, that in the application of these powers, there will be some room left for the most efficient companies to earn a return that is commensurate with the quality of services they are providing and the level of satisfaction of their clients. I think we should retain some financial incentives to outperform the competition within an appropriate set of guidelines if we wish the free enterprise system to provide its maximum benefits.

In conclusion, we support the major initiatives of the government and we do welcome these changes, because we think they will allow us to further expand our relationship with our clients by making us their primary provider of bodily injury benefits on a first-party basis. Quite frankly, we would much rather be in the position where our role is to pay benefits than be in a position where our role is to fight against paying benefits. We look to these coming changes with enthusiasm and confidence in our ability to fulfil that increased mandate.

The Chair: Thank you. I have Ms Oddie Munro for up to four minutes.

Ms Oddie Munro: Thank you very much for your presentation. I am just wondering, the litigation on both sides, the lawyer on behalf of the client and the lawyer on behalf of the insurance—can you tell me what the major blocks were? We have understood that one of the reasons for moving to this plan was the cost of litigation and the delay that that occasioned for a claim to be given back to the client, and I am wondering if you could give some idea as to what the major blocks were, excluding the delays in the court system which I understand will be improved by the court reform proposed and accepted right now.

Mr Thibault: You mean in terms of dollar savings?

Ms Oddie Munro: No, just in terms of, were there any blocks or obstacles or any points of confrontation? What happened?

Mr Thibault: You mean Quebec?

Ms Oddie Munro: Yes in Quebec, Ontario, anywhere that you know you have a litigation system which represents both the client and the insurance company.

The Chair: You identified that you wanted to deal more directly in a first-party basis.

Mr Thibault: Yes.

The Chair: What are the roadblocks now from an adversarial point of view, in your estimation?

Mr Thibault: Today the first-party benefits are present but they are very small, so they are not sufficient to meet the needs of most people. I am not sure I understand fully the question, but today, when we have an automobile accident claim, we will pay our own insured according to the benefits. But the big portion of the claim dollars go to third parties. They are not people who are our clients, and the name of the game is litigation. The name of the game is fighting. We try to be fair and we will assess every claim on its

own merits, but the way it works is a compromise. It is always, two parties start from each side and then you try to end up in some kind of compromise. Sometimes you cannot. Am I answering the question?

Ms Oddie Munro: I do not know if you are answering it, but certainly that is the question that I am attempting to get more information on. I understood that was one of the reasons why the costs of insurance were spiralling, in some ways relating to litigation costs on both sides.

Mr Thibault: Yes, they are, and that is certainly part of the reason. We know, for instance, that bodily injury liability claims have gone up about 13 per cent per year and I do not believe wages have gone up that much. Part of the increase goes for the other things. They could go to pay medical expenses, our long-term care, but certainly the administrative and legal expenses involved are tremendous and the figure that has been estimated is around \$500 million, if I recall.

It will still be expensive after the reform. I believe the estimates call for \$300 million in legal fees after the reform.

1050

Ms Oddie Munro: How do you react to the alternative, the dispute resolution mechanism? Do you think there will be just as much litigation, or do you think you will be involved in as much litigation in another sense through that mechanism, or do you think it will suit the clients?

Mr Thibault: We think it will suit the clients in the majority of cases, if I speak for our own company. We are certainly committed to providing the best service that we can. I do not think that for wage losses or for a majority of expenses there should be problems. I am not saying that for certain types of very expensive care there will not be some kind of period of time when there will be uncertainty about what is reasonable and what is not reasonable, but I think that with time we will develop some understanding of what automobile benefits should be in those grey areas.

Mr Sola: I am interested in your Quebec experience. You mentioned that you offered optional coverage in Quebec and that it was not taken up. What was the reason for that? Was that because of the costs of the optional insurance or just the availability already of other types of insurance for these professions, these people earning higher incomes? Could you give us any figures, like what the response was to this optional coverage you provided?

Mr Thibault: I will ask Mr Mercier to answer that question since he was there at the time and I was not.

Mr Mercier: That was a long time ago. There were two basic packages or offers. The standard Quebec automobile policy provides for an increased loss of income replacement benefit within the auto policy, and we negotiated with another insurer a package that was broader than just auto, 24-hour accident income replacement, which we tried to sell for basically the same premium as insurers sold the auto coverage, even though it is broader coverage, and that is going back 12 years. But as I recall, we did a mailing to clients of maybe 15,000, and if we sold 100 policies, it was good. So the package died a natural death a year later. I believe price-wise it was a \$6 premium for a \$50 weekly income increase, so a salary of about \$2,500 later for about \$6.

Mr Philip: Ms Oddie Munro has repeated a statement that the Liberal members constantly make about trying to justify this in terms of the high cost of legal fees, and it is interesting that yesterday they tabled 39 research documents and not one dealt with the cost of legal fees. Your association has picked out of the air—or I assume it is out of the air because it has not yet identified where it gets the figure of \$500 million in legal fees. They do not mention, of course, that a lot of those legal fees are for the insurance companies' lawyers opposing giving any benefits to those who are insured. I ask you, sir, do you have any research to substantiate that figure of \$500 million cost that you have by the Insurance Bureau of Canada, of which I gather you would be a member?

Mr Thibault: We are not a member of the Insurance Bureau of Canada.

Mr Philip: You have shown good taste then.

Mr Thibault: I rely on the estimates that have been prepared by other people. I did not put them in my written presentation and I cannot tell you how accurate they are, but I believe they have been done on a professional basis.

Mr Philip: If their figures stand up, then I would have thought they would have presented them. But you said that the name of the game is adversary and that this is part of the problem in the present system. We have been told by lawyers acting on behalf of their clients who are trying to obtain insurance that that in fact is the case and that the insurance companies are the ones then that are the adversary and are creating blocks. I ask you, what is there to believe that

there will be anything different in terms of litigation since under this bill, if a person is going to gain the right under the threshold for a serious injury, he is probably going to have to go to court to prove that he has met the threshold and then, having proved that he is seriously injured, go to court a second time then to get the benefits for that injury. How does that reduce court costs? The lawyers whom we have talked to say it is going to increase the amount of litigation rather than decrease it.

Mr Wildman: So does Osborne.

Mr Philip: And so does Justice Osborne.

Mr Thibault: Intuitively, I do not subscribe to that point of view, but I do not have figures that can substantiate that. For sure, most cases will be clear. There will be a lot of small cases that do not meet it and there will be major cases that meet it. There is not going to be argument about whether or not the person is entitled to sue. Once we have established that a person is entitled to sue, there will be an adversary type of position.

At least the person will be receiving substantial first-party benefits in the meantime. But the process will remain. It will be one of compromising, one of trying, on the victim's side, to get the most out of it and, from the insurance company, to try to come up with the most reasonable settlement that we feel comfortable with, and in most cases end up somewhere in between. Yes, there will be litigation costs, there will be legal fees, but I would think that it is only for some grey area type of injuries that there will be substantial litigation. I still think that most other cases will be settled out of court.

The Chair: Mr Kormos for a minute and a half.

Mr Kormos: You talk about compromises. It seems that to many people in Ontario the only people you have compromised is the Liberal Party of Ontario.

It is interesting that insurance companies come before this committee praising this new legislation, but consumer groups, unions, lawyers, doctors, teachers, police officers' associations, advocates for the rights of the handicapped and people involved with psychological injuries, head injuries, rehabilitation experts, all come opposing it.

Canada Press today reports that indeed some people will be facing as much as 50 per cent more in their auto insurance premiums, all those with the Cadillacs and the Lincolns, but perhaps those with the Chevy Lumina and the Ford Probes will only be in the 25 to 30 per cent range.

Mr Rempel from Ottawa promises his people here in Ottawa that his Ottawa drivers covered by Zurich Insurance will not face premium increases next year. Are you prepared to promise your drivers in Ottawa that they will have zero per cent premium increase in the coming year if this legislation is passed? Can you promise that now so the press can report it so that those same drivers and clients of yours can hold you to that promise?

Mr Thibault: The very large majority will have no increase in the Ottawa area. Those who will have an increase will be people who drive the more expensive vehicles, strictly.

Mr Kormos: Like K cars, Chevy Lumina and Ford Probes.

Mr Thibault: No, no. When I say "more expensive vehicles," I mean the more expensive vehicles.

Mr Kormos: I am not sure there are any cheap ones any more.

Mr Thibault: To answer your question about why these other groups are against no-fault, they have their own reasons, but I cannot help but think that they are not representing all accident victims. They are representing accident victims who somehow can prove somebody else's negligence.

The Chair: Gentlemen, thank you for your presentation. I have Mr Nixon on a point of information.

Mr J. B. Nixon: It is a point of information. There has been some question as to the \$500 million, \$300 million, whatever, that goes to legal expenses and adjustment costs. I am referring to the reference report of the Ontario Automobile Insurance Board, page 68, which says, "Evidence prepared by Mr R. Miller, the actuary retained by the coalition, estimated, on the basis of data extracted from the database underlying the Osborne bodily injury claims survey, that 33.5 per cent of every bodily injury pure premium dollar represents legal costs and loss adjustment expenses, with 66.5 per cent being paid out to the claimant."

Mr Kormos: What are the adjustment expenses?

1100

Mr J. B. Nixon: Later on the report says, "Mr Miller estimated total legal costs...at 25.2 per cent, and loss adjustment expenses at 8.3 per cent, and concluded that \$400,000,000 is spent annually in Ontario on legal fees and other disbursements."

That is the reference report of the Ontario Automobile Insurance Board.

Mr Kormos: How much now for legal fees and other disbursements? There is a little bit of erosion there. Holy cow.

Mr J. B. Nixon: It is just a point of information.

Mr Kormos: But these are typical. I have read—and be honest.

The Chair: Order.

Mr Kormos: —or is integrity so beyond your capacity? Integrity is so beyond your capacity.

The Chair: Order.

Mr Kormos: If Patti Starr—

Mr J. B. Nixon: Face the facts. You need a psychiatrist. You have a problem.

Mr Kormos: You people are so corrupt. You are the party of Patti Starr, fridges and paint jobs and you are so deep in the back pockets of the insurance industry you are spitting out lint.

Mr J. B. Nixon: I will not describe what you are spitting out.

The Chair: This was not necessarily the intention, but that was entertainment. Stay tuned for the next version. The next group, la Régie d'assurance automobile du Québec, just landed. I am assuming they are getting into the airport, so I am going to take a 10-minute recess. Thank you very much.

The committee recessed at 1101.

1122

The Chair: I am going to reconvene the committee. We are in the process, for the benefit of the audience, of setting up another PA system so that the deputants can be heard a lot more clearly than they were the last time.

Welcome to the committee, representatives of la Régie de l'assurance automobile du Québec. You have half an hour. If you could, within that time, allow some time for questions, comments and discussions, we would appreciate that. Please identify yourself and then proceed.

RÉGIE DE L'ASSURANCE AUTOMOBILE DU QUÉBEC

M. Genest: A l'invitation du ministère ontarien des Institutions financières, la Régie de l'assurance automobile du Québec est heureuse de pouvoir contribuer à la réflexion qu'effectuent les parlementaires de l'Assemblée législative au sujet de l'assurance automobile.

Le texte que vous avez devant vous, nous allons le résumer pour entrer dans le temps que vous nous avez proposé.

Dans cet avis, nous nous proposons de dresser un bref bilan du régime québécois d'assurance automobile, de rappeler les principales données relatives à la législation, d'examiner la relation entre l'assurance automobile sans égard à la faute et le nombre d'accidents de la circulation et enfin, de présenter l'expérience québécoise en matière de prévention des accidents de la route.

D'abord, un bref historique : le 5 mai 1971, le gouvernement libéral a créé un comité d'étude relatif à l'assurance automobile, composé de cinq membres, dont le président était l'actuaire Jean-Louis Gauvin. Le rapport Gauvin comprenait quatre chapitres. Le premier chapitre traitait du dossier des accidents au Québec et contenait 18 recommandations sur la sécurité routière.

Le deuxième chapitre abordait le fondement juridique de la responsabilité. Le troisième chapitre présentait une critique du régime privé prévalant à cette époque. Cette critique établissait que le système de responsabilité avec faute empêchait l'indemnisation totale ou partielle de plusieurs victimes — 28 pour cent des victimes blessées n'avaient droit à aucune indemnisation. De plus, il ne compensait pas la totalité des pertes économiques des victimes car 40 pour cent de la perte était non compensée.

Le régime privé, expliquait le rapport, indemnisait mieux les victimes de dommages matériels que celles qui avaient subi des dommages corporels. Il favorisait indûment les victimes qui avaient des pertes faibles au détriment de celles qui avaient de lourdes pertes. Le niveau de compensation était fortement dépendant de la présence d'un avocat dans la réclamation et de son habileté.

Ce régime était lent à compenser, coûteux et les primes payées étaient excessives. L'assurance non obligatoire avait pour effet de rendre la compensation impossible ou inadéquate pour certaines victimes d'accidents dont les responsables étaient insolvables ou non assurés.

Le quatrième chapitre proposait des recommandations. Dans le modèle proposé, le rapport s'inspire notamment des expériences de l'Australie et de la Nouvelle-Zélande, ainsi que de nombreuses études dont celle du professeur André Tunc.

Le rapport Gauvin a été déposé en janvier 1974 au gouvernement libéral, lequel avait été réélu en octobre 1973.

Une commission parlementaire a été créée pour entendre les principaux intéressés par le sujet. La majorité des avis étaient contre l'idée de nationalisation de l'assurance automobile et contre le principe du « no-fault », à l'exception

de l'Association de protection des automobilistes, de la Confédération des syndicats nationaux et de la Société d'assurances des Caisses populaires Desjardins.

À la suite du dépôt du rapport Gauvin, le gouvernement libéral forma un comité interministériel de hauts fonctionnaires dans le but d'explorer les modalités d'application du rapport. Ce comité recommanda l'instauration d'un régime obligatoire d'assurance sans égard à la faute pour les blessures corporelles. Il recommanda également l'administration de ce régime par une société d'État monopolistique et le maintien, par le secteur privé, de l'assurance complémentaire au régime de base ainsi que l'assurance des biens matériels. Ce rapport n'a jamais été rendu public.

Au cours de la campagne précédant les élections de 1976, le Parti libéral du Québec prônait l'indemnisation de toutes les victimes, l'accélération du paiement des indemnités et la réduction des coûts d'administration de l'assurance automobile. Le programme électoral du Parti québécois, lequel a remporté l'élection générale, proposait un régime public, complet et obligatoire.

Le 10 décembre 1976, le premier ministre confia le dossier de l'assurance automobile à Lise Payette, alors ministre des Consommateurs, Coopératives et Institutions financières.

Le 15 avril 1977, M^{me} Payette déposa son livre bleu intitulé « Pour une réforme de l'assurance automobile » à l'Assemblée nationale du Québec. Les mesures proposées par ce livre comprenaient la compensation des dommages corporels selon le concept de l'indemnisation sans égard à la faute; l'assurance-responsabilité obligatoire dans le cas des dommages matériels à autrui; l'établissement de centres d'évaluation des dommages matériels; et l'administration mixte du régime, c'est-à-dire, par le privé et le public.

En juin 1977, M^{me} la ministre présente le projet de loi sur l'assurance automobile à l'Assemblée nationale du Québec. La Loi sur l'assurance automobile fut adoptée par l'Assemblée nationale en troisième lecture le 21 décembre 1977. Le régime est entré en vigueur à la date prévue, le 1^{er} mars 1978.

Un certain nombre d'études, effectuées en 1986, ont permis de dresser un bilan des premières années du régime. Parmi les points forts qui en ressortent, il convient tout d'abord de signaler la protection de toutes les victimes, la réduction sensible des délais de règlement, l'amélioration de l'efficacité permettant la dimi-

nution des coûts et l'augmentation de plus de 35 pour cent, en dollars constants, de la protection globale par rapport à l'ancien système.

Un rapport d'étude des professeurs Fluet et Lefebvre en arrive à la conclusion que les analyses empiriques et factuelles portent à conclure que ce bilan est globalement tout à fait positif pour trois raisons: d'abord, la protection contre les pertes que peuvent entraîner les accidents d'automobile a considérablement augmenté; deuxièmement, le système d'assurance a connu des gains d'efficacité importants; et enfin, il y a eu une amélioration des aspects qualitatifs des processus d'indemnisation.

Maintenant, quelques mots sur la législation. Les grands principes du régime universel d'assurance automobile du Québec sont: l'indemnisation sans égard à la faute; l'indemnisation de toutes les victimes jusqu'à concurrence de certains maximums; l'indemnisation selon le concept de la perte économique, la perte étant compensée au fur et à mesure qu'elle se produit — il s'agit du concept de réparation intégrale du préjudice; la pleine revalorisation des indemnités; la réadaptation des victimes; et l'indemnisation relative des pertes non économiques reliées aux dommages corporels, douleurs et perte de jouissance de la vie.

1130

Tous les Québécois sont admissibles pour un dommage corporel causé par une automobile. L'indemnité de remplacement du revenu versé aux victimes d'accidents représente 90 pour cent du revenu net de la personne. Les frais engagés suite à l'accident sont remboursés. En 1990, le montant maximum d'une indemnité pour dommages non pécuniaires est de 75 000 \$; il sera de 100 000 \$ en 1991 et de 125 000 \$ en 1992.

Les indemnités de réadaptation servent à la réintégration sociale et professionnelle de la victime d'accident. Le conjoint survivant reçoit des indemnités de décès variant entre 40 000 \$ et 200 000 \$ selon le revenu et l'âge de la victime. Toute victime d'accident a droit à la reconsidération administrative de la décision d'indemnisation dans un délai de 60 jours après la réception de cette décision. Il s'agit d'une révision sur dossier ou après audition, réalisée par un examen de novo du dossier. Le réclamant qui n'est pas satisfait de cette révision administrative peut en appeler devant la Commission des affaires sociales qui, elle, constitue un tribunal administratif possédant un pouvoir quasi judiciaire. La victime est habituellement représentée alors par un avocat et elle peut interjeter appel dans un délai de 90 jours de la réception de la décision en

révision de la Régie. La Commission rend une décision finale et sans appel.

Le régime d'assurance automobile a été instauré après de nombreuses études de faisabilité et de rentabilité. C'est grâce à une sorte de détermination et volonté politique que ce régime universel, sans égard à la faute, et administré par une société d'Etat, a pu être instauré malgré l'opposition rangée d'un grand nombre de cas constitués dont, notamment, les avocats et les assureurs privés. Le bilan de la législation et de son application a permis, en 1996, de dégager de nombreux bénéfices produits par ce système d'assurance.

Je cède maintenant la parole à André Viel.

M. Viel : Alors, mon rôle à la Régie de l'assurance automobile : je suis le directeur des études et analyses. Je remercie le comité permanent pour l'occasion qui m'est donnée, de lui faire part de l'expérience de la Régie, en ce qui concerne l'indemnisation sans égard à la faute, d'une part, et la prévention des accidents, d'autre part.

Concernant l'indemnisation sans égard à la faute, est-il vrai qu'il augmente le nombre d'accidents ? Je crois que c'est une des principales questions que vous vous posez. Au Québec, en 1978, les accidents avec dommages corporels ont augmenté de 30 pour cent, ce qui est énorme. Le 1^{er} mars 1978, c'est l'entrée en vigueur du nouveau régime. C'est un régime qui garantit des indemnités sans égard à la faute, pour les dommages corporels, mais il ne faut pas oublier aussi que c'est un régime qui assure plus de personnes qu'auparavant, ces personnes ayant intérêt à déclarer leur accident à la police. Tous les Québécois sont assurés pour leurs dommages corporels, et pour les dommages matériels aux tiers. Donc, plus d'assurés qu'auparavant, plus de rapports d'accidents, probablement.

C'est aussi un régime qui réduit le coût d'assurance des conducteurs d'automobiles qui présentent un risque d'accidents plus élevé, et qui leur facilite l'accès à la conduite. Tous les conducteurs et propriétaires de véhicules de promenade au Québec paient la même prime d'assurance pour les dommages corporels. Que vous soyez jeune, que vous soyez âgé, homme ou femme, c'est le même prix pour l'assurance pour les dommages corporels. C'est un autre facteur qui a pu expliquer l'augmentation des accidents. C'est aussi un régime qui fait l'objet de beaucoup de publicité lorsqu'il entre en vigueur. On incite les conducteurs à faire venir les policiers pour qu'ils remplissent un rapport d'accident. Même aujourd'hui, environ 20 pour cent des réclama-

tions pour les accidents avec dommages corporels ne sont pas corroborées par un rapport d'accident rempli par un policier.

Les deux premiers facteurs importants d'augmentation des accidents en 1978 : plus d'assurés qu'auparavant et aussi, plus de conducteurs à risque, puisque la prime d'assurance est uniforme pour tous les conducteurs pour la partie « dommages corporels » seulement.

En plus des changements au niveau du régime d'assurance, qui ont pu affecter la déclaration des accidents et leur nombre réel, il faut remarquer l'entrée en vigueur le 1^{er} janvier 1978 d'un nouveau formulaire de rapport d'accidents. On constate que c'est à partir de janvier 1978 que l'augmentation des accidents corporels prend de l'ampleur : 18 pour cent de plus d'accidents corporels en janvier 1978, 32 pour cent de plus d'accidents avec dommages corporels en février 1978, donc avant l'entrée en vigueur du régime public de l'assurance automobile.

Les études des professeurs Gaudry et Devlin sur la question ne sont pas concluantes. On ne s'entend pas sur l'ampleur de l'effet de la non-responsabilité. Pour ceux qui connaissent les modèles économétriques développés par Gaudry et Devlin, Devlin en arrive à la conclusion qu'il y aurait eu un effet important de la caractéristique « no-fault » sur l'augmentation des accidents. Gaudry, pour sa part, dit que cet effet serait négligeable et je m'appuie sur une de ses publications qui paraîtra en 1990. Aux suites à ses analyses, il en vient à la conclusion que l'augmentation des accidents en 1978 serait due principalement à la tarification uniforme, au sous-rapportage des accidents et au fait que l'assurance soit devenue obligatoire. Alors c'est ma réponse à la première question qui était posée : le régime « no-fault », est-ce qu'il augmente les accidents ?

La deuxième question que l'on nous posait, c'est concernant la prévention des accidents : qu'est-ce que la réforme de l'assurance automobile a apporté ? En créant la Régie de l'assurance automobile, le législateur a voulu former un organisme pour administrer le régime public d'assurance automobile. En le fusionnant avec le Bureau des véhicules automobiles en 1981, il confiait au même organisme un rôle important dans la prévention des accidents et dans la réparation des dommages. A titre d'assureur unique pour les dommages corporels, la Régie peut profiter des bénéfices découlant des mesures de prévention mises en oeuvre, ce qui n'est pas le cas des multiples assureurs privés. Les assureurs privés, s'ils font de la prévention, tous les

assureurs vont en profiter. Dans le cas de la Régie, si elle fait de la prévention, comme elle est l'assureur unique pour les dommages corporels, elle se trouve à recouvrer les bénéfices de son action de prévention.

La Régie possède également des dossiers complets sur chacun des conducteurs, ce qui lui permet de planifier ses travaux et d'établir sa tarification. La Régie s'est dotée d'une unité responsable de la planification, de la prévention routière en 1984. Le premier plan a été approuvé en 1986. L'objectif était une réduction de 25 pour cent des décès et des blessés graves pour la période 1985 à 1988. Les activités visaient une augmentation du port de la ceinture à plus de 80 pour cent et une diminution de la conduite avec facultés affaiblies.

1140

On peut croire que c'est grâce à la coordination des interventions et à l'établissement de priorités qu'a rendu possible la planification que des résultats ont été obtenus : le port de la ceinture à 86 pour cent en 1987 ; la baisse du tiers de la conduite avec facultés affaiblies entre 1981 et 1986 ; la baisse des décès de 21,5 pour cent entre 1985 et 1988.

Merci pour votre attention. Si vous avez des questions...

Mr Kormos: Let me know when there are two minutes left.

The Chair: I have Mr Philip, Mr Kormos, Mrs LeBourdais and Mr Sterling for up to five minutes.

Mr Kormos: Please let me know when there are two minutes left. I am impressed in particular because your plan provides compensation for pain and suffering and loss of enjoyment of life. My first question is, how is it that the Liberal Party in Quebec had the courage to take on the auto insurance industry and advocated a public plan, as you describe in your report? How is it that the Liberal Party of Quebec could advocate a public plan, a nonprofit plan, notwithstanding the obvious criticism of, among others, the insurance industry and, of course, still run one now?

M. Genest : D'abord, je dois préciser que la Loi sur l'assurance automobile a été adoptée et est entrée en vigueur sous le régime du Parti québécois en 1976. Par ailleurs, la commission d'étude, la commission Gauvin, avait été créée par le gouvernement libéral en 1971. Dans les programmes des partis politiques, à partir de 1970, chacun des programmes contenait des dispositions sur l'assurance automobile.

Le Parti libéral, en 1970, en vue de l'élection du 29 avril 1970, proposait une assurance obligatoire et un régime étatique. L'Union nationale et le Parti québécois avaient en gros les mêmes dispositions dans leur programme. Ces dispositions-là étaient fondées sur des expériences de nationalisation. Le Québec avait connu sous deux gouvernements précédents la nationalisation de l'électricité, de la santé et de l'éducation. C'était dans le vent, des nationalisations, et c'est la raison pour laquelle le comité Gauvin a été créé. Ce comité-là visait à fournir une étude avec des données scientifiques sur la rentabilité et la faisabilité de l'assurance automobile et fournissait aussi des comparaisons avec ce qui se passait à l'extérieur.

M. Viel : Si je peux ajouter : la question de la privatisation du régime public de l'assurance automobile a été soulevée à quelques occasions, mais le débat n'a pas été plus loin dans le sens que ce qu'on disait, à ce moment-là, c'était : « Bien sûr, le même service qui est rendu par la corporation publique pourrait être rendu par des assureurs privés en donnant aux consommateurs plus de choix. »

Je ne sais pas ce qui a empêché qu'on aille plus loin dans ce domaine-là. Ce que je constate, c'est que les efforts de prévention de l'organisme public qu'est la Régie de l'assurance automobile ont pris beaucoup d'importance à l'égard des décisions qu'on a à prendre en ce qui concerne la privatisation.

Je disais tantôt qu'il y avait un problème quant à la prévention en ce qui concerne les assureurs privés. Si l'assureur privé fait de la prévention, investit dans la prévention, tous les autres assureurs privés n'investissent pas nécessairement dedans, mais ils vont profiter de la prévention de ceux qui en font.

En ce qui concerne la Régie, celle-ci est très motivée à faire de la prévention. Meilleure est sa prévention, moins sont les déboursés qu'elle a à verser suite aux accidents d'automobiles. Donc, la dynamique est très importante, à ce niveau-là, pour un régime public.

Mr Kormos: It is remarkable to note that the Liberal Party not only advocated a public system in Quebec but had the courage to campaign on it during the course of an election. Tell us about the importance, in your view, of including compensation for pain and suffering and loss of enjoyment of life.

M. Genest : Bon, alors, vous savez que la clé du régime est la compensation du revenu, d'abord, les limites du remplacement du revenu, et c'est ce qui est la plaque tournante de ce

régime. Par ailleurs, les indemnités dites non pécuniaires, ou morales, correspondent à la réparation du préjudice physique, psychologique permanent comme suite à la blessure. Il s'agit d'un montant forfaitaire qui est versé en sus des annuités de remplacement du revenu et des frais reliés à l'accident.

Comme suite au jugement de la Cour d'appel en 1978 et de la Cour suprême ensuite sur l'affaire Thorton, Teno et Andrews, nous avons au Québec ajusté le maximum pour dommages non pécuniaires en fonction des 100 000 \$ que la Cour suprême avait décrétés à cette époque-là, et c'est la raison pour laquelle nous avons, à partir de janvier 1990, doublé le maximum pour dommages non pécuniaires et que, en 1992, il sera triplé, de façon à ajuster cette compensation un petit peu à la pratique des tribunaux civils en la matière.

Mr Philip: This government in Ontario has refused to look at the public routes taken by western provinces. Has your experience with a public route come to the same conclusions as has happened in western Canada, namely a result in the reduction of administrative costs and therefore a passing of savings on to the public in terms of less premiums?

M. Genest : Oui, je ne connais pas de façon précise la situation des provinces de l'ouest actuellement, mais au moment où l'étude à été faite en Saskatchewan, l'Etat assurait une couverture de base obligatoire pour les dommages corporels et pour les dommages matériels. Le régime de la faute est en vigueur et à ce moment-là aussi, d'après nos études au Manitoba, on assistait en 1971 à la création de la société autopac, société qui joue un rôle de monopole, cependant des assurances supplémentaires pouvaient être en même temps achetées du secteur privé. En 1973 la société d'Etat du Manitoba accusait un déficit de 9 millions de dollars, en 1974 les primes augmentaient de 11 pour cent, en 1975 l'augmentation des primes était de 19 pour cent plus une taxe sur l'essence de deux cents le gallon.

En Colombie Britannique le gouvernement néo-démocrate instaurait en 1973 un régime d'Etat qui, lui, accusait un déficit de 34 millions de dollars après un an d'opération. En 1974 le déficit accumulé était de 181 millions de dollars, on assistait alors à une augmentation des primes de 19 pour cent. En décembre 1975, le nouveau gouvernement du Crédit social tentait de retourner l'assurance automobile au secteur privé, les sociétés privées ont refusé et une augmentation des primes de 139 pour cent a suivi en 1976.

M. Viel : En ce qui concerne le régime public québécois, je voudrais mentionner qu'en 1978 les contributions, les primes d'assurance, s'élevaient à 99 \$ par personne, et en 1990 elles sont passées de 99 \$ à 113 \$, qui est une augmentation très faible du coût de l'assurance. Il faut dire bien entendu que, l'assurance étant devenue obligatoire, les coûts d'administration diminuent; comme il n'y a pas de poursuite devant les tribunaux, c'est un élément important. Vous vous trouvez devant un régime qui prévoit des maximums. Alors, ce sont des conditions qui limitent l'escalade des coûts dans le domaine des assurances.

1150

The Chair: Mr Sterling, five minutes.

Mr Sterling: Thank you very much. I found your presentation interesting. In your system you not only collect premiums directly from the driver, but you have other sources of income as well. Can you give us a breakout of the total you collect in premium as a percentage of the grand total and the total collected through other taxation measures, such as gas, licences or—

Mr Viel : Pour ceux qui ont le rapport, vous avez l'information sur le financement à la page 17. En fait, il y a trois sources de revenus pour le régime: une contribution sur le permis de conduire, qui est présentement de 22,93 \$; une contribution pour le propriétaire du véhicule — cette contribution est de 90,82 \$; et l'autre source de financement qui est très importante, ce sont les intérêts sur les placements. Comme la situation financière de la Régie est très favorable et que les conditions économiques ont permis de faire des placements à des taux d'intérêts très élevés, les revenus de placement de la Régie constituent un des postes des plus importants pour le financement du régime.

Mr Sterling: I guess overall I was interested more in the degree of subsidization as a percentage out of \$100. For every \$100 you are collecting, how much are you getting directly from the person in the form of a premium and how much are you getting from other indirect taxation?

Mr Viel : En fait, les seules sources de revenus sont la taxation directe sur le conducteur et sur le propriétaire du véhicule. Il n'y a pas d'autres sources, il y a simplement les revenus d'intérêt. Maintenant, en ce qui concerne les proportions, c'est une question un peu technique à laquelle je pourrais répondre plus tard, dans la documentation que j'ai.

Mme LeBourdais : Merci pour votre présentation ce matin. J'ai lu dans votre présentation que le sujet de la traumatologie est un sujet très important pour la Régie. Pouvez-vous me dire quel processus vous utilisez pour les blessures graves, comme celles d'ordre psychologique, plus spécifiquement ?

M. Viel : Je crois que vous faites référence à la réadaptation.

Mme LeBourdais : Oui.

M. Genest : D'abord, quand nous parlons de traumatologie, nous parlons de systèmes d'urgence médicale sur les routes et de systèmes dans les urgences des hôpitaux. Est-ce que c'est bien la question que vous posez ?

Mme LeBourdais : C'est parce que dans notre système en Ontario, les choses psychologiques ne sont pas comprises. Le mot « threshold » en français, je ne pense pas que ça existe dans le même sens. Il n'y a pas de « threshold » pour passer. Vous n'avez pas ce système.

M. Genest : Il faut dire que tous les frais médicaux, quelle que soit leur nature — physique ou psychologique — sont couverts par le régime d'assurance. Nous avons aussi des programmes spéciaux de réadaptation : par exemple, nous avons un programme pour les traumatisés crâniens-cérébraux, qui représentent près de 25 pourcent des victimes d'accidents, et qui vise à doter de ressources additionnelles aux ressources des hôpitaux de façon à assurer un retour aux activités régulières, ou un retour au travail ou à la vie d'avant l'accident par des ressources spécialisées qui ont développé une expertise auprès de ces victimes-là. Je pense à des ergothérapeutes, physiothérapeutes, psychologues, neuropsychologues. Donc, nous avons créé une expertise qui n'existait pas dans le réseau de la santé, de façon à offrir des services de réadaptation beaucoup plus spécialisés pour cette catégorie de victimes-là.

M. Sola : Premièrement, un commentaire : le Nouveau Parti démocratique applaudit le système sans égard à la faute qui est en vigueur au Québec et, en même temps, il s'oppose à l'adaptation d'un système similaire en Ontario.

Maintenant, je voudrais poser une question. Est-ce que la Régie a un programme pour augmenter le salaire des citoyens qui ont un salaire plus élevé que le maximum qui est couvert par votre régime ?

M. Genest : Le maximum actuellement est de 40 000 \$. Nous compensons 90 pour cent du revenu net par rapport à un maximum de 40 000 \$. L'excédent est couvert par les assu-

reurs privés. Ce maximum garantit une protection entière à 85 pour cent des citoyens en cas de perte de revenus suite à un accident et il est calculé à partir de la rémunération moyenne des travailleurs québécois.

M. Sola : Il n'y a pas de programme pour augmenter ce maximum de 40 000 \$?

M. Genest : Le régime est indexé chaque année et revalorisé le 1^{er} janvier de chaque année.

The Chair: Gentlemen, thank you very much for your presentation today. We appreciate it.

Next we have the Public Service Alliance of Canada, Mr Bean. We are in the process of distributing your brief. We have half an hour to hear you. If you could leave some time for some questions, comments and discussion, we would appreciate that. For the benefit of Hansard, please identify yourself and then proceed.

1200

PUBLIC SERVICE ALLIANCE OF CANADA

Mr Bean: Thank you very much. My name is Daryl Bean. I am the president of the Public Service Alliance of Canada. On my right is Mike Martin, who is the assistant to myself as president of the Alliance.

First of all, I want to thank you, Mr Chairman, as well as the members of the committee, for the opportunity to appear before you.

1. The Public Service Alliance of Canada represents some 170,000 employees of the federal government, its department agencies and crown corporations. The alliance has the honour of representing approximately 70,000 members in Ontario.

2. Alliance members resident in Ontario cover a wide spectrum of occupations in every region of the province, from clerks in Cornwall to tradespeople in Thunder Bay as an example.

3. While we do not profess to be experts in the insurance field, we have watched closely the ongoing debate on auto insurance that has taken place in Ontario over recent years and we appear before you today to place on public record our concerns with regard to Bill 68.

4. At the outset, we wish to make it clear that the alliance is not opposed to no-fault auto insurance per se. On the contrary, we believe legislation restricting the right of accident victims to litigation to be entirely appropriate. That said, however, the level of financial assistance available to accident victims must be realistic and paid for by the insurance industry.

5. In our view, Bill 68 is a flawed piece of legislation which fails to meet either of these two tests. Moreover, Bill 68 does not address the overriding concerns of the residents of Ontario concerning auto insurance, namely, premium increases. Instead of improving the existing system, Bill 68 will lower the benefits for many of those unfortunate enough to be the victims of injuries as a result of automobile accidents.

6. Bill 68 is patently unfair to all residents of Ontario, except the insurance industry, which stands to reap an unprecedented and unwarranted windfall as a result of this legislation. In addition to a series of unpalatable measures which are contained in this piece of legislation, it is estimated that \$143 million in revenues will be lost to the provincial coffers through the elimination of the OHIP bulk subrogation agreement and the three per cent corporate tax presently payable by the automobile insurers to the provincial government.

Every man, woman and child in Ontario will have to pay \$16 a head in increased taxes to subsidize these changes to the auto insurance. In return, drivers will be subject to an eight per cent increase in insurance premiums next year with absolutely no guarantee that even more exorbitant increases will not be levelled in the future.

7. In addition to the transfer of taxpayers' resources to the insurance industry, there are several aspects of Bill 68 and the Ontario motorist protection plan which are simply unacceptable to alliance members and, indeed, to all Ontario workers and citizens.

8. Bill 68 shifts the onus of providing income replacement for auto accident victims from auto insurers to workers and employers. As a result, disability insurance plan costs will skyrocket, thereby causing workers and/or employers to pay a higher premium.

9. Subsection 231b(1) of Bill 68 reduces the no-fault benefits received by an insured person by the amount received from a disability insurance plan or a sick leave plan. The effect of subsection 231b(1) is to alter quite significantly the role of negotiated disability plans and cumulative sick leave plans. If Bill 68 is adopted, disability plans and cumulative sick leave schemes will become the first source of income replacement for a worker injured in an automobile accident.

Subsection 231b(1) makes the auto insurers liable only for a residual replacement income after a worker exhausts his or her entitlement under a disability plan or cumulative sick leave plan. By making sick leave plans and disability

insurance plans the first source of replacement income for auto accident victims, subsection 231b(1) shifts a significant part of the burden of providing income replacement from auto insurers to workers and their employers.

10. More important, forcing an automobile accident victim to exhaust accumulated sick leave credits before drawing benefits from an auto insurance policy will seriously and adversely affect a large number of workers, roughly one fifth of office workers and two fifths of nonoffice workers. A great many workers rely on accumulated sick leave credits to protect them from income loss in case of chronic illness. As well, accumulated sick leave credits are sometimes converted to a cash sum when an employee retires or used to facilitate early retirement. As a result, unused sick leave is a form of deferred compensation. Bill 68 taxes these accumulated credits for the benefit of the auto insurance industry.

Indeed, what makes subsection 321b(1) even more offensive is that it applies to not just credits that were accumulated after enactment of Bill 68, but to credits that were accumulated before Bill 68. Subsection 231b(1) is tantamount to retroactive expropriation of negotiated sick leave benefits. It is a legislated transfer of assets from ordinary workers to the auto insurers.

11. In addition to making the Ontario hospital insurance plan, disability insurance plans and private citizens' personal insurance plans carry the onus for income protection for accident victims, the Ontario motorist protection plan contains the introduction of a threshold system that severely restricts a victim's right to claim against the plan beyond the provided schedule of no-fault benefits.

12. Under this plan some have estimated that 90 to 95 per cent of all innocent accident victims would not meet the threshold requirements and would be barred from making claims in an accident against the wrongful party or that party's insurance company. There no longer will be compensation for the pain and suffering that an accident can cause, and to qualify for the requirements to apply for additional benefits an injury must be an impairment of a bodily function. The impairment must be permanent and the impairment must be serious. The bodily function must be an important one, the injury causing the impairment must be a continuing one and the injury must be physical in nature.

13. One does not need to be a medical practitioner to know that an individual would have to be near dead in order to qualify for

litigation to recover damages from a guilty party or that party's insurer. Surely that is not why we have regulated auto insurance in the province of Ontario.

Mr Kormos: Dead or damned close to it.

Mr Bean: 14. Simply put, the threshold is much too high and flies in the face of the advice of Justice Coulter Osborne and his 1986 review of Ontario's auto insurance industry, as well as the Ontario Automobile Insurance Board's 1989 examination of threshold systems which it too rejected, and must be withdrawn.

15. The schedule of benefits proposed by this legislation is inadequate and totally unacceptable. Surely the quid pro quo for denying an accident victim the right to sue must be a reasonable level of income replacement. By establishing a maximum weekly benefit of \$450 per week the Ontario government is forcing a substantial portion of its workforce to risk being precariously underinsured or alternatively to purchase additional disability insurance.

16. Employees earning in excess of \$29,000 will clearly find themselves in this precarious position. Moreover, since the income replacement amount is not indexed to either the consumer price index or the average industrial wage, the real value of the income replacement will decline dramatically over a short period of time.

17. As a result, although the average alliance member, who will earn approximately \$29,500 in 1990, will not be adversely affected by this provision immediately, she or he will undoubtedly suffer in subsequent years.

18. Moreover, averages are of little, if any, consolation to workers, including many of our members who still earn modestly, albeit above \$30,000 per year. An alliance member employed in the third level of the program administration group will earn \$40,202 in 1990 and would require \$618 per week in income maintenance to provide 80 per cent of his or her former salary. Since the maximum payment proposed pursuant to Bill 68 is \$450 per week, this moderate-income alliance member would require an additional \$728 per month in event of an accident in order to replace 80 per cent of his or her former salary.

19. The alliance is absolutely convinced that the level of income replacement benefits should be increased to at least 90 per cent of gross pay with no cap on the maximum weekly benefit. At the very least, the maximum weekly benefit should be increased dramatically from the \$450 proposed in Bill 68. Unless radical surgery is

performed in the benefit provisions of Bill 68, many accident victims will be impoverished by legislation supposedly developed for their benefit.

20. Our intention in appearing before you today as representatives of a sizeable number of Ontario workers is to draw attention to the very real concerns that alliance members have brought to our attention regarding auto insurance and the proposed Ontario motorist protection plan. Members of our union who work and live in Ontario have been waiting for substantive action by this government on this issue for a number of years, and to be frank, their expectations far exceeded the provisions of Bill 68.

1210

Mr Kormos: The Premier (Mr Peterson) promised more.

Mr Bean: Yes.

21. Alliance members, like other Ontario citizens, had hoped for improved regulation of the auto insurance industry, greater protection for accident victims and a halt to the ever-increasing premiums. Bill 68 fails to deal with any of these problems and in several areas reduces the rights and protection of drivers in this province.

22. We sincerely hope that you will consider the views of 70,000 Ontario workers and their families, as represented by the Public Service Alliance of Canada. We also hope that you will reconsider the introduction of Bill 68, go back to the drawing board and, with the assistance of expert advice such as that offered by Justice Osborne, develop a piece of legislation that will truly protect motorists in Ontario.

Mr Ferraro: On a point of clarification, Mr Bean: On page 7 where you indicate that alliance members on average would have to subsidize their costs by an additional \$728 a month in the event of an accident because of the 80 per cent, \$450 cap, I think it may be helpful to clarify that the public service does have an income replacement program now and that indeed the \$450 would be used to top up that collateral source. I am mindful of the fact that you do not like this collateral source rule, but indeed the alliance members themselves would not have to subsidize themselves beyond what they are paying now, quite frankly.

Mr Bean: If you are talking about the Ontario government, that might be quite possible. I do not represent the Ontario government employees. I represent federal employees who happen to

live in Ontario and we do not have income replacement.

Mr Ferraro: They do not have an income replacement program in the public service.

Mr Bean: We have a disability insurance program which in this case will eventually run out because the disability insurance program has some limits on it. Plus having to use it before you can draw from this system means that the employers' contributions as well as the employees' contributions are going to be increased.

Mr Endicott: Just on the point, the way this has worked, you do not have to use the disability before you get the income benefit. These benefits top up the existing disability.

Mr Philip: Precisely. So the employee still subsidizes.

Mr Bean: That is right, so the employee still has to subsidize the employee and the employer at the auto insurance industry because, yes, they are going to draw disability as long as they can but there are amendments within the disability insurance plan as to how long you can draw and in what circumstances you can draw.

Mr Philip: I am pleased to see that you and other labour leaders are becoming increasingly concerned, as you have pointed out in item 6, about the way in which this Liberal government is squandering our tax money on expensive programs without any proof that there is any public benefit to the average working-class person. You certainly pointed that out.

I would like to deal, though, with item 9 in which you point out this kind of inverse Robin Hood by David Peterson in which he is stealing from the working class to give to the insurance companies. I give you an example. My office manager in my riding office had an automobile accident a few years ago. If she had been under this system—at the present time she has had a severe stroke and is collecting sick benefits—my suspicion is that if she had been living after Bill 68 and had the same automobile accident and the same stroke, she would have been forced into a position of perhaps having to look at going on Canada pension or some other government or tax-assisted system.

Is this section 231b not only a taking of money out of the pockets of working people but also an increased cost to the taxpayer either directly or indirectly?

Mr Bean: Let me first comment that it is not only labour leaders who are opposed to this, but lots of employers are opposed to it—let me make

sure that record is correct—as well as a number of other organizations within Ontario.

There is no question that somewhere along the line this is going to take money out of the ordinary, individual taxpayer's pocket. For example, within the federal public service, we have a sick leave fund that of course is there in case people take sick. In this situation, if one has an accident, he will have to run out his sick leave plan so that he has no days left—it is accumulated at 15 days per year if you do not use them—and subsequently go on disability insurance. If somebody had 300 days' sick leave, he would have to use up all of his sick leave then go on disability insurance. Only then would there be some top-up if it was necessary as a result of this plan.

Of course, as they go along with the disability insurance plan, there are limits and restrictions on it, so eventually somewhere along the line there is going to have to be some more assistance to them whether it comes out of here or whether it comes out of welfare, which is the likelihood it will end up being. There is no question but that the average taxpayer is going to have to pay more.

In our case, because we negotiate with the federal government, while we have at the present time a two thirds sharing of the disability insurance plan, obviously we are going to be looking to increase that to 100 per cent paid by the employer. When the employer pays that, of course that money also comes out of the taxpayers. Because we happen to work for an employer that is the government, that has an impact on what people pay in taxes; there is no question.

Mr Philip: I appreciate that and thank you for your answer.

Mr Kormos: What is remarkable is that among other failings the government has refused and failed to cost the impact of this new scheme on workers' compensation, on OHIP, and quite frankly on general welfare assistance and other social welfare programs. Would you not have expected the government to at least have costed its impact before it embarked on presenting the legislation? I tell you, there is no indication they are even doing that now.

Mr Bean: I would have not only expected that; I would have thought they were obligated to do so. This government along with some of the past governments has talked about improving the auto insurance system in Ontario for years, and one would have thought that if it was serious about it, it would have been obligated to cost out the

ramifications of it. Certainly, as indicated by Justice Osborne, a considerable amount of study has been done on it, but it would be appear to me that this government has chosen to ignore that.

Mr Kormos: The government initially promised premium increases from zero to eight per cent, and now Murray Elston, who is indeed the Minister of Financial Institutions—I should tell you that other than the first day when he made his kickoff speech, he has not appeared in this committee since then to listen to any of the people such as you making submissions. He has disappeared, other than to tell the public of Ontario a week and a half ago, "Well, it isn't going to be just zero to eight per cent." Some people are going to be paying as much as 50 per cent. The obvious conclusion is that the bulk of people are going to be somewhere in the middle, between eight per cent and 50 per cent. Really, we are going to face auto insurance premium increases of from eight per cent to 50 per cent in Ontario, yet the victims are going to get significantly less.

Do you see that as in any way fair? More so, do you see that in any way as a fulfilment of the promise of the Premier that he had a very specific plan to reduce auto insurance premiums?

Mr Bean: Certainly it is not a fulfilment of the election promise, but then we have got used to not having election promises fulfilled in this country, so it is not surprising. I was going to indicate also that while I guess one could say a minimum of eight per cent might be the more actual way of reporting it, we are talking about this year. What happens next year and onwards? There is no guarantee what it is going to be next year.

1220

Mr J. B. Nixon: Thank you for appearing before us.

One of the values of having the public hearings has been that we have heard a lot of constructive criticism and commentary. It also gives us an opportunity to clarify some of the provisions of the bill and so on. I would like to take a little bit of time doing that.

You talk in section 9 of your brief about the utilization of sick leave. I would just ask you, perhaps after the hearings, to take a look at clause 231b(1)(d), which does not require the employee to use their sick leave; rather it is at the option of the employee to use his sick leave or take his no-fault income loss payments. All that the bill is saying is that you cannot combine both. You can take sick leave or you can take the auto insurance policy's income loss. It is not as if the bill would

force an employee to use his sick leave before getting any auto insurance benefits.

The second thing is that you point out in point 21 that you had hoped for improved regulation of the auto insurance industry. I would refer you to many sections of the bill. What is proposed is that the Ontario Automobile Insurance Board, the filing rate approval board, continue in existence and is merged with the office of the superintendent. In addition, if you look through the explanatory notes to the bill, you will find it will have much broader powers under this bill than it has ever had in the past, fines in the order of \$100,000 or \$200,000, injunctive relief, ability to declare unfair consumer practices and enforce them, ability to pursue nonpayment of no-fault benefits: all these are powers that this new office would not have had under the existing regime. I suggest to you that there is a very strong regulatory power invested in the new office of the commissioner of insurance.

My question to you has to do with the concerns that we are all raising in one way, shape or fashion or another, and that has to do with the balance between premium increases and compensation levels. As you know, premium increases were going up in excess of 20 per cent in 1985 and in 1986 until they were capped in 1987. There is a clear demand by the public for at the very least a stabilized market and stabilized premium levels. That is against the backdrop of X financially increasing claims costs.

The figures we get from Kruger and from Slater and so on are that they are in the order of 13 per cent a year which is far in excess of inflation, and probably if that were reflected in premium increases would be intolerable to the public.

Perhaps you could talk a little bit about the balance. Just before doing that I point out that the minister, when he talks about zero and eight, eight per cent increases for Metro and zero per cent for the rest of the province he has been talking about averages. He always says, "Average zero per cent in Ontario, average eight per cent in Metro." One would normally expect there to be a dispersion on either side of the average, depending upon your individual risk and the type of car you drive, so keep that in mind. I would suggest to you that eight per cent is not a minimum but the average.

Mr Bean: Let me say that you have raised a number of things, although your question got down to a pretty narrow focus. Let me first of all say with regard to the sick leave option that this is quite an option. You can use up your sick leave and draw 100 per cent of your pay or you can go

on the starvation amount that is provided in this bill. That is quite an option to leave an employee.

Not many employees are going to be dumb enough not to use up their sick leave even though they may find later on that they are going to need it, when they recover from the automobile accident, when they are able to go back to work and find out they take sick from something else.

You talk about improvements in the bill. I would not deny that there are some improvements. It would be hard for a government to draft a bill and not put some improvements in it. I recognize that.

You talk about the premium increases. I am going to be from Missouri on this one when you talk about the average zero per cent in Ontario and eight per cent in the Metro area. My friend, I would sure like to see that one. The day we are going to get a zero per cent increase in automobile insurance is the day I will be waiting for, because it is going to be an interesting day.

In addition to that, I would point out that when you raise some of the questions about improvements, etc, the price that is being paid for some of those improvements is much too high. I hear people talking about reducing the litigation costs. Certainly the experience in other areas has not shown that. I can foresee the day when you are going to have a lawyer for the insurance company, a lawyer for the individual, and maybe even workers' compensation involved because if it an accident at work while they are driving a vehicle. I can see three lawyers and three doctors all appearing, representing and trying to deter-

mine whether this is substantial or an impairment or whatever you want to call it. They are going to appear before a judge who is not really an expert in any of this, have the arguments and we are going to reduce litigation costs. I want to really see that happen.

What I see out of your regulations—yes, there are some regulations, but really what it does is give the dollars to the insurance company first, up front, with the hope that some of the regulations may assist. I suggest to you that approach does not make much sense, particularly given that there have been some fairly significant studies. You had a group of people here before you from Quebec, before us, who have had some experience with it. There is certainly a considerable amount of experience in the United States with these types of systems. I do not think we need to repeat the mistakes they made.

The Chair: Thank you for your presentation. We have a point of clarification.

Mr Ferraro: A minor point perhaps: one of the members in the opposition indicated that he felt the welfare sector would be subjected to increased costs. The reality of situation is that as a result of the \$185 being paid for the first time in the province to retired, unemployed and students, they should receive a reduction in costs.

Mr Philip: I said the taxpayer and he agreed with me.

Mr Kormos: Let's see your figures on that.

The committee recessed at 1229.

AFTERNOON SITTING

The committee resumed at 1330.

The Chair: I am going to recognize a quorum and stick to my usual bad habit of starting on time.

I welcome to the committee Dr Pipe from the Medical-Legal Society of Ottawa-Carleton. I do not know whether you have a written submission. If not, we will get copies of Hansard later.

Dr Pipe: I do not have a written submission, but we will be filing with your committee a submission in writing following this presentation.

The Chair: You have half an hour. If you could leave us some time for questions, answers and comments, we would appreciate it. Please proceed.

MEDICAL-LEGAL SOCIETY OF
OTTAWA-CARLETON

Dr Pipe: My name is Andrew Pipe. I am a physician and I am here this afternoon to represent the views of the Medical-Legal Society of Ottawa-Carleton. This is an organization that has been in existence since 1983 and has a membership in excess of 225, approximately half of whom are lawyers and half of whom are physicians.

The object of our society is to promote medical, legal and scientific knowledge in all its aspects, but specifically to promote co-operation, tolerance and understanding between the two professions in the interests of justice and in the best interests of our patients and our clients.

With that as background, I would like to introduce my remarks by saying that I would initially make a few general comments relating to the question of no-fault insurance. Then I would like to make some specific points which I think are of relevance particularly to medical practitioners and which reflect the perspective of health care professionals, a perspective which of course includes our perception of what is in the best interests of our patients, both our present patients and patients of the future.

I think we would agree that we have no problem with the concept of no-fault insurance. As a philosophical foundation for this discussion, we are pleased to be in agreement with the proposed legislation. None the less, I think it important to point out that we have serious objections to the concept of a threshold that will

deny full recovery of economic losses caused by the fault of another in up to 95 per cent of the cases involving accident victims.

We would suggest in general terms that the threshold be eliminated and that instead one offers a plan similar to that which exists in Manitoba, which would give accident victims the choice of either accepting compensation from a fair schedule of benefits in such a plan or alternatively have the right to recover losses through legal action without regard for any pre-existing threshold.

We also feel that if Ontario does continue to insist on a threshold despite advice by experts and commissions over the past few years, then that threshold must of necessity include a concern for the psychological sequelae, the pain and economic loss over and above the benefits of the proposed plan.

Those are some general statements which I think underpin our oral submission to you today. In the remaining time, I would like to make some very specific comments which I think are apropos the perspective of a physician.

I think it must be clearly understood that while at the present time the ultimate decisions about eligibility to pursue legal action in the case of an accident are determined by a judge, medical evidence continues to be the cornerstone for most legal decisions. With that in mind, I think it is important to understand that the narrow and in our view discriminatory definition of the proposed threshold will present particular problems for physicians. It may place them in some very uncomfortable and stressful positions as they may be implicitly pressured by patients to represent their injuries as sufficient to meet threshold criteria.

I want to say quite personally and also, with no apology, quite passionately that the practice of medicine is stressful enough without becoming involved in protracted, prolonged, often highly emotional and embarrassing discussions with patients as to whether or not their particular conditions meet certain legal requirements. In this sense, it seems that physicians have unwillingly been placed in the role of arbiter in terms of dealing with these issues which will perhaps of necessity arise from some of these accidents.

At the present time, it is a role that is fulfilled by the court and we feel a little uncomfortable about the degree to which the responsibilities of the courtroom, in our view, will now be moved

into the clinic. This, quite frankly, is a series of circumstances and a set of pressures which we as physicians are not happy or enthusiastic about ultimately accepting.

I think it is important to understand that there will in the future probably be even greater conflict among practitioners as well as medical specialists about the degrees of disability and the physical versus the psychological or psychiatric nature of such disabilities in so far as this particular legislation, if enacted, is concerned.

We would ask whose opinions will ultimately prevail: the physician's, the chiropractor's, the physiotherapist's, the athletic therapist's? Certain practitioners will discover all kinds of abnormalities in some settings that will not be confirmed by medical practitioners of another discipline. There will be instances where psychiatrists will insist that the headache or neck pain following an injury is organic or physical versus neurosurgeons or orthopaedists who deny any demonstrable underlying pathology. Once again we will be shifting the focus of these kinds of discussions from the courtroom to the clinic.

Certainly it has been my professional experience and the experience of many of my colleagues that the psychological consequences of injury are often the most disabling consequences. The elimination of such disabilities as eligible for benefits will not expedite rehabilitation. For that matter, I think it is important that I draw your attention to the fact that there is increasing evidence that many of the psychological consequences of injuries such as head injuries are founded on definite physical injury to the brain, even though the demonstration of such changes is well below the resolution of most commonly applied clinical tools.

I would, for instance, suggest to you that historically there is evidence, which has only recently been accumulated, that people who suffer so-called minor head injuries—that is, they are admitted to hospital having experienced a period of unconsciousness of less than three, four or five minutes—very often have very profound personality and psychological consequences many years after the incidence of those particular so-called trivial or minor head injuries. It has only been with the development of sophisticated processes of neuropsychological testing that those particular findings are now evident.

If you extrapolate that experience of the past into the future, I think you will see that under the present wording of the threshold and the eligibility for inclusion in threshold circumstances there are some implications for the future which merit

a great deal of your consideration and your concern.

We are also concerned that the current wording of the proposed plan disregards completely the common dilemma of the evolution of an acute injury that appears to resolve initially but subsequently evolves into a chronic disorder. I refer of course to situations such as might best be demonstrated by a joint injury that several years after the injury, as a consequence of the injury to the joint, turns into osteo-arthritis, or a head injury that several years later redeclares itself with the development of post-traumatic epilepsy. Here again, I think some significant consideration and some of your concern should be focused on those particular issues.

We are disturbed to note that the proposed plan completely disregards the very real, complex problem of chronic pain that very often follows many injuries. This is a multidimensional clinical problem whose physical components may not be fully demonstrable within the limited resolution of our current clinical tools, but here is an area which is worthy of much closer consideration than would seem to have been given to this issue by the architects of the current plan.

We are also concerned that the provision of elimination of disfigurement from the threshold, if there is any potential for subsequent cosmetic revision, is inappropriate. Virtually any scar or deformity can be modified in some way at some future date, but I think that is not sufficient cause to deny access to those who have been disfigured or scarred badly to receiving proper compensation.

We think the proposed plan poses several problems of definition—and I think in some ways I have touched upon some of those—which will require several test cases. We would ask how many years will be required before all sides will fully comprehend the rules that are to be developed. We are not sure, given that scenario, that this will possibly expedite fair settlements to victims who are not at fault to start with.

For example, what constitutes an important bodily function? What about restriction of motion following an injury to the spine or a joint? If so, what degree of restriction? What is a continuing injury? Is a disease process that has stabilized a continuing injury; an acute process that is now chronic, such as post-traumatic headache, neck pain? And so on and so forth. What about permanent versus serious? Is permanent synonymous with serious, as would appear to be the case in some areas of the United States?

1340

The proposed plan with its threshold, in our view, imposes a universal denial to recovery from losses if the threshold cannot be met. Under the proposed plan, as a physician I cannot afford to be injured in a motor vehicle accident for I will have no hope of an economic recovery, despite the fact that I was not at fault.

Surely, as I alluded to before, a plan such as that in place in the province of Manitoba is more reasonable in that it provides the option for those with minor injuries and little economic impact to be compensated quickly through a sponsored plan without denying others the access to the courts to recover fully losses over and above those currently available. Despite the apparent agenda to treat us all as equal, the impacts of a given injury will differ significantly according to many variables beyond the presence or absence of continuing physical disability or irreversible disfigurement.

Physicians are being in some sense manipulated into being the gatekeepers of this proposed plan. Their reports and evidence will determine whether a victim, often their patient, meets or fails to meet the threshold. How many physicians have asked for this new challenge to the patient-doctor relationship? How will our regulating bodies and our disciplinary organizations view the complaints of patients who claimed their physicians failed to adequately represent them in such situations?

The demand for medical reports will not diminish as victims try to prove that their disability meets the threshold. Since attempts to reach the threshold will be vigorously resisted by the insurance industry, court appearances for cross-examination are likely to increase rather than decrease as more and more medical reports are submitted in evidence.

One of my colleagues anticipates increased liability to legal action by former patients who are considered as "recovered" or not significantly disabled, but who subsequently may continue to suffer a latent complication of an earlier injury such as post-traumatic arthritis or post-traumatic epilepsy that I mentioned before, and who may actually have been denied access to legal proceedings on the basis of my colleague's earlier medical reports.

In anticipation, my colleague and several others feel that that they have to develop new defensive medical report-writing strategies to create reports so vague and noncommittal so as to absolve themselves of any subsequent liability, while actually in some senses perhaps prejudic-

ing the cause of their patients by avoiding definitive statements about their injuries and disability.

Such strategies will create a whole new industry for second and third evaluations and the need for specialists devoted entirely to the determination of disability and threshold. I ask you, will this serve the public well?

Finally, I am concerned about the provisions in the proposed plan that eliminate the recovery of some of the health care dollars spent on the treatment and rehabilitation of accident victims. In these times of attempted restraint on health care expenditures, why does the plan propose to remove additional dollars from OHIP?

I hope that these comments have touched on areas with a perspective that perhaps is not similar to any of those that you have been presented with before. Clearly our interests, as I appear before you today, are those of our patients, our present patients and our future patients, and it is with some sense of foreboding that we anticipate the implementation of the proposed no-fault insurance legislation.

I would like to thank you on behalf of the Ottawa-Carleton Medical-Legal Society for allowing us to make this short, and I hope appropriate, presentation to you today and would assure you that a written submission will follow our appearance this afternoon. I would be very pleased to answer any questions.

The Chair: Thank you. In terms of the written submission, because it is on Hansard and we will all get copies of it, it is not necessary, but I will leave it entirely up to you whether you want that to be done.

Mr Kormos: On the role of doctors, in terms of their being the people with the deep pockets, once people are denied access to the courts for compensation for their pain and suffering by virtue of the threshold, do you have any fear of doctors being perceived as the deep pockets, the persons from whom legitimately suffering people are going to start looking to for compensation?

There are some people out there trying to create an impression that whiplashes and sciatic pain and these types of pains are sort of things that people can learn to live with and just move on. My impression is that these are extremely painful, excruciating things that can tend to dominate one's life. It is not like taking an Aspirin for a headache for one evening and then carrying on with the rest of your life. These people are highly motivated to look to somebody for some sort of compensation.

Do you see doctors as being placed at risk by virtue of being the deep pockets?

Dr Pipe: I am glad you made that point, because I deliberated making some variation of that point myself but thought it perhaps might be a little unseemly, but I think that is very appropriate. I think there are going to be people who are going to feel that they have been estranged from the system and estranged from any ability to derive compensation from the system; ergo, they will look elsewhere for their compensation.

One very obvious focus of that compensation will be those who provided medical or clinical care to them during the time following their accident. I think we are in a very vulnerable situation in that respect and, yes, I share your concerns. That, of course, raises trepidation among many members of my profession.

Mr Kormos: In that respect, not just medical doctors, physicians and surgeons—

Dr Pipe: Health care institutions, hospitals, psychologists.

Mr Kormos: —but other medics, like chiropractors, all those people. Along with that, do you see there being a realistic prospect of automobile accident victims being denied treatment in terms of practitioners not wanting to get involved in a scenario wherein you have an automobile victim, be they medical doctors, chiropractors or any other sort of treatment professional?

Dr Pipe: I am not so sure I would go so far as to say that. I would like to think the members of my profession and our colleagues in the other health disciplines would act always in the best interests of patients, particularly those who are the innocent victims of accidents.

Irrespective of that, there is no doubt going to be a tremendous amount of misgiving on the part of many of my colleagues. As you know, many of the members of our profession are acutely concerned about medical litigation. And the practice of defensive medicine, if one can term it that way, adds significantly to health care costs, costs which you and I as members of the community must ultimately bear. This will be yet another pressure, it would seem to me, to encourage the practice of defensive medicine.

Mr Kormos: You as a doctor encounter Murray Elston, I guess, for the second time within this decade, neither association being particularly pleasant.

The Chair: Mr Philip, two minutes.

Mr Kormos: He might have wanted to respond.

Mr Philip: You make an excellent point about our overtaxed health care system now going to be in worse shape and, indeed, there is a transfer of—depending on which figure you use—over \$40 million out of OHIP and into the insurance companies as a result of this.

What I want to deal with, though, is the psychological consequences of disfigurement. As you know, for psychological impairment, unless you have gone way over the threshold, you are not going to be covered under this. I ask you as a physician, is there a very real psychological damage that results from disfigurement and do you feel that people are going to be very seriously suffering and not being compensated for that suffering as a result of this psychological impairment coming out of a disfigurement problem?

Dr Pipe: I would have to say unequivocally that disfigurement can be psychologically devastating to virtually anyone. Our identities are entirely tied up with our perception of how we look and how we look to other people. Virtually everyone in this room, I would suspect, were they to receive a facial injury that was significantly disfiguring, particularly people who are in the public eye such as many of you, would realize the full brunt of that kind of psychological trauma, let alone the sort of 16-year-old high school student of either sex whose whole life is bound up in body image.

To suggest that because at some point some form of correction can be applied to such a disfigurement that individual is denied access to appropriate compensation for the kind of trauma that results from such an injury is totally unfair, in my view, and is representative of an unfeeling attitude towards those who are the victims of accidents.

1350

Mr Philip: If I am driving a truck and I have a serious accident that results in a psychological problem—and right now I am acting on behalf of some 340 or more workers' compensation victims before the various levels of the Workers' Compensation Board and the tribunal—if I happen to be driving that truck in the exercise of my work and suffer a psychological problem as a result of the accident, I am sure you would agree from your experience that I would be compensated by the Workers' Compensation Board, maybe with some difficulty but at least I can seek compensation and frequently it is paid.

Dr Pipe: I would agree.

Mr Philip: Do you see any kind of justice in a system that says, if you have an identical accident, when it takes place at work you can be compensated but if you happen to be run over by some jerk on the highway on your way home from work—I am not pointing at anyone—and have psychological damage as a result, you cannot be compensated? Do you see any justice in two kinds of systems of health care like that?

Dr Pipe: That seems to be rather inequitable to me and I would think would appear so to others who would look at that objectively.

Mr Sterling: I would like to thank you for continuing your efforts in the Ottawa area community and actually in the province in terms of your interest in social issues as well as your own profession.

Can you tell me, under our present medical care system, if I were injured in an accident what jeopardy is there for me, in terms of cost to me personally, to shop for an opinion from various doctors all over the province or all over Canada, to find one doctor who will support my case to meet the threshold? Do I have to pay any of the bills for that?

Dr Pipe: Under the current system, no, that is quite correct. You are free to seek medical advice where you wish.

Mr Sterling: And as often as I wish in order to meet that threshold.

Dr Pipe: That is right. I should add that some physicians do not see patients without referrals but, in my experience, it is not difficult for people to receive multiple referrals.

Mr Sterling: You mentioned about the joint injury and then a latter situation where, a few years later, arthritis would develop and that kind of thing. Under our present system, that could happen as well but I guess your concern is in relation to the doctor's jeopardy in dealing with that.

Dr Pipe: Yes, I think that is a very specific concern, in that if a doctor renders an opinion in good faith, such that the victim of an accident thereby does not meet the requirements of the threshold, but subsequently a complication of this injury declares itself, then I think there is a concern that the patient (a) has unfortunately been denied access to that threshold system but (b) may now seek to vent his concerns by making the physician the litigant.

I think that is unfortunate and it places physicians in yet another position of vulnerability.

Mr Sterling: We heard this morning from Dr Slater, who has been studying the insurance question and who came out with a report in 1986 and is in favour of some kind of no-fault system. He was saying to this committee that he fully expected that layering of insurance is going to take effect. In other words, in order to protect myself from being an innocent victim I will seek other insurance in order to cover the possibility of lost income over and above the \$450 a week, which may not meet my obligations in terms of living. Is the doctor situation going to be another part of that layering of the insurance? Are they going to have to seek other kinds of insurance to cover this new liability?

Dr Pipe: I cannot totally answer that question. I would assume that the current protection from liability which most physicians carry would deal with this new form of liability should it appear, but that is speculation on my part. Certainly I think physicians will be involved in the layering of insurance, if I have the term right, inasmuch as I think physicians will now recognize that they are particularly vulnerable in terms of the compensation which will be made available to them not meeting their particular needs in so far as expenses and overheads of running a practice are concerned. They will have to ensure that they have appropriate insurance in place. Obviously, many of them have those forms of insurance, but that raises more questions there.

Mr Sterling: But if there is a real case of increased exposure, regardless of whether it is under the same policy or a new policy, you are going to have an increase in premium.

Dr Pipe: That is correct.

Ms Oddie Munro: I certainly appreciate your concern that the physician might end up being a gatekeeper and might take the onus of burden. Do you do any team management or case approach to medicine in the hospitals where you would have a number of health care professionals who would be part of that decision?

Dr Pipe: I think that is certainly very true in certain medical specialties—I am thinking of rehabilitation medicine and psychiatry—but that is not universally true of many medical disciplines. Obviously opinions as they relate to the orthopaedically injured are a summation of social workers' input, of occupational therapists' input and so on, but ultimately it is the physician who prepares a clinical report and it is the physician who certainly under the current system makes that report available to a court in litigation.

Ms Oddie Munro: But on the rehabilitation side, certainly many of the groups that have been before us, including PAIN and FAIR, and the individual rehab specialists seem to be able to work in a team when they are looking at the diagnosis of a patient. I am just wondering if one way out of the dilemma—and I do not know whether “medical adviser” or “medical advisory panel” just simply means the physician alone—whether that might be an answer to your dilemma or whether the profession is indeed so fragmented that this cannot be accomplished.

Dr Pipe: I think your point is a very good one and I think it is workable to a greater or lesser degree when one practises in the luxury of a community like Ottawa in terms of where there is a wide variety of clinical services and clinical facilities and clinical skills available. But what about the sole practitioner in North Overshoe, Ontario, who is providing a tremendous service to his or her community and who now has to become the gatekeeper for this system, and imposed upon him now are more onerous responsibilities in terms of trying to assemble a team or participate in a team, which may mean travel out of the community? I see very significant advantages to that approach, but it is not something that I think could be universally workable across every community in this province.

Ms Oddie Munro: That is an accessibility question. I actually was asking whether or not there is a way out of the gatekeeping dilemma by using more of a team approach.

Dr Pipe: I suppose that is one way of trying to deal with that problem. I do not see that this is going to be an immediately or universally applicable approach, but it certainly has merit.

Ms Oddie Munro: I know McMaster medical school certainly is based on that entire concept.

Mrs LeBourdais: You mentioned in your discussion that as an individual practitioner you could not afford to be in an accident. You mean that obviously you make in excess of \$30,000 and the payment that we would allow, which only goes up to \$30,000, would not provide you adequate compensation to cover your overhead, etc. That is a fact. However, we have been very clear all through this that those individuals making in excess of \$30,000—and that takes in most of the deputants who have come before us; I think I would be quite safe in saying that—but what that \$30,000 covers is 80 per cent to 85 per cent of the population. If we ask those individuals to cover premium costs for those of us who are

fortunate enough to make more than \$30,000, that is putting an unfair onus and burden on those individuals who are least in a position to afford it.

1400

I thought it was also interesting when the group from Quebec came this morning. They had offered a disability program and tried to sell it. They said many of those who had higher incomes in Quebec had declined it because, since they were making higher salaries, it was part of the benefit package from their various firms. That would include those of us who are members of the Legislative Assembly. We are given extra disability coverage. If you are in private practice, that perhaps is not appropriate to you, but as a private businessman you would certainly be wise to invest in extra disability insurance.

You have also said this makes you a gatekeeper. Yes, it does, just as the federal government will be asking you to be a gatekeeper on the abortion issue; just as the emphasis in the health care system on keeping people, particularly seniors, at home, and in many cases allowing seniors to die at home, puts an extra onus on you to be called during the middle of the night to come out and verify time of death. Those are additional pressures that your profession is facing.

So, too, are we asking teachers now to teach not only geography, etc, but to teach sex education, drug education and multiculturalism. So all professions, perhaps all areas of life, have heavy demands on them. I guess the main point I want to make is that with those who are fortunate enough to have a greater income than \$30,000, it is felt those people can hopefully afford a little more.

Dr Pipe: I think your point is well made, and my comment was not meant to plead some sort of special case for hard-pressed physicians.

Mrs LeBourdais: No. I appreciate that.

Dr Pipe: I offered that merely as a personal observation about the extent to which there are people in this community, not just physicians—and I would venture to say not just people necessarily at the upper echelon in the socioeconomic structure—who will not be treated as equitably as other members of the community. My principal concern relates to the degree to which physicians will become gatekeepers, though not in the sense that you have raised some examples of the ways in which we are gatekeepers.

I am very well aware of our professional responsibilities to the community and to our

patients. I would like to think that our profession, for the most part, meets those particular responsibilities and anticipates that those responsibilities will be expanded, but by and large those are clinical responsibilities, they are not medical-legal responsibilities.

Unless you have ever been in the situation of having to deal with patients, patients whom you have known for many years, patients who see you not as an independent, detached, objective, clinical determinant of their disability but one who is their advocate to the nth degree, then you have no ability to understand the pressures that will be placed on physicians when they see patients come before them as plaintiffs, not as patients. Quite frankly, those are decisions and circumstances which I think our training, our preparation and indeed the nature of the physician-patient relationship has not prepared us for.

One is quite willing and understands all the other responsibilities that you have outlined and understands that people in other walks of life have responsibilities to the community and so on, but it seems to me that this is an imposition of new responsibilities and new situations that are not necessarily conducive to the physician-patient relationship and ultimately will harm the interests of both the patient and the practitioner.

Mr J. B. Nixon: I have a question of clarification. Did I understand you to say that in the present system it was your belief that medical reports are provided to the patient free?

Dr Pipe: No, you did not understand me to say that.

Mr J. B. Nixon: Okay.

The Chair: Thank you for your presentation.

Next we will hear from the Ottawa Insurance Brokers Association. As they are coming, I will get reconfirmation that tomorrow morning at 8:30 we are going to have officials of the Ministry of Financial Institutions available. Is that still meeting with everybody's desire? Okay. Thank you.

Gentlemen, please identify yourselves for the benefit of Hansard. We have half an hour. If you could leave some time for questions, answers and comments, we would appreciate that. Thank you very much. Please proceed.

OTTAWA INSURANCE BROKERS ASSOCIATION

Mr Baizana: Good afternoon, ladies and gentlemen. My name is Jack Baizana and I am the president of the Ottawa Insurance Brokers Association, an association of insurance brokers

that was founded in 1910. It is not a particular group that was founded to discuss this particular bill. I own and operate my own insurance brokerage here in the city of Ottawa.

With me today is Terry Taylor, the assistant general manager of the Insurance Brokers Association of Ontario, our provincial association. He is a gentleman whom I know the members of the committee have heard from before.

I am sure by now you have heard that for many Ontarians it is very difficult to find affordable automobile insurance. We are in a period in the insurance industry known as a tight market. This means that insurance companies are reluctant to underwrite the coverage of most drivers, particularly those whose past record indicates that they may have an accident in the future. Only drivers who have absolutely no accidents or convictions against their record are able to find insurance in the regular marketplace, and even these people sometimes have difficulties.

Unfortunately, if you have had a couple of speeding tickets or violations or a couple of accidents, you end up in the Facility Association paying a premium which many feel is exorbitant. Also, in the Facility Association there are many drivers who are good drivers, those drivers who have not had accidents, who have not had convictions, but for one reason or another because of our tight market situation—perhaps someone has left the country for a matter of six months or a year, stopped driving his car for whatever particular reason, health reasons or what have you—have come back into the marketplace, purchased a car, gone back to their insurance broker and said, "Provide me with car insurance." They go back to the company they had six months ago. It says: "Sorry. Even though we've had you as a client for the last 15 or 20 years, we're sorry, we can't do it. We are not making any money at this particular auto insurance."

So what happens? The insurance broker is faced with a situation of placing this person, a good driver normally under any other market conditions, in the Facility Association. There are many people in the Facility Association now who, with the implementation of Bill 68, will have their rates reduced quite considerably once their renewal comes up, or even midterm.

Our job, as I mentioned, is as insurance brokers and we do not represent the insurance companies. We represent them, but not here in this capacity today. Our job as brokers is to provide our clients with proper insurance cover-

age at a reasonable price. When it comes to automobile insurance today, that is a very difficult goal for us to meet. What is needed is a radical change in the system which addresses the concern of the government, the consumer and the insurance industry.

The consumer wants to easily purchase automobile insurance. I get calls every day in my office and even since this bill or since no-fault, since even the freeze on rates came out in 1987, the consumers are concerned about their rates. An awful lot is being talked in this committee about the victims, as I am sure you have heard for the last number of weeks. We sympathize with the victims. Those victims are our clients, as brokers, but they do want affordable insurance, and that I stress very, very strongly.

The government, as the ultimate consumer watchdog, wants to create an environment in which this will happen. The insurance companies want to sell products that are adequately priced and that will enable insurers to reasonably predict their future claims costs. It is our opinion that the implementation of all facets of the Ontario motorist protection plan, as it has been presented to you, will bring about these results.

Many parts of the plan have merit. We are particularly pleased to see that in future claimants will deal with their own insurance company where they will be treated like customers, as they should be, rather than deal with someone else's insurance company, where they have been treated as adversaries. This is an important change, even though Bill 68 has not come about at this particular time in 1990. It sounds logical that people should buy insurance through their brokers, through their insurance company, and expect that that insurance company will look after them when they have an accident.

At present they do pay certain accident benefits as part of the policy and they will fix your car, but those seriously injured victims have to go out and find a lawyer to determine who is at fault in the accident. This is not in any way knocking the lawyers, but the system at the present time is that they find a lawyer, they discover who is at fault in the accident after perhaps a lengthy battle and they end up then having to sue for damages.

1410

If you buy a refrigerator from Sears, you do not go to the Bay for service; it is a much closer relationship. Companies will have to provide a high level of service or risk losing the business at renewal. As an aside, I can tell you that as an independent insurance person concerned with the

welfare of my clients, I refuse to deal with any insurance company that does not treat my customers with respect. I know this opinion is shared by all my colleagues here in the Ottawa area.

Another advantage of the proposed system is the requirement that claims be paid promptly. Some companies are bending over backwards to find more efficient ways to deliver the benefits under the new plan to their clients. One company that I know in particular, because its particular computerization system withdraws money from one's bank account to pay the premiums, is now going to reverse the computer and put the payments back in your bank account so that someone who is sitting in a hospital with two broken legs worrying about his or her benefits is not going to have to worry about who is going to get the cheque at home if no one is at home to deposit it in the bank. In other words, it is just going to go back into your bank account.

There is another advantage. A good part of my day is now devoted to chasing down claims cheques on behalf of my clients and trying to determine whether the insurance company's adjuster is going to get around to looking after my client's file. The new system will be a great improvement over the present one in this regard.

Finally, I am pleased to see that Bill 68 calls for the establishment of a new regulator, the Ontario insurance commissioner. I see that the government has designated Donald Scott, who, from his credentials, looks to be a man who will fill that role very adequately. It is my sincere hope that the commissioner will strictly regulate insurance companies and prevent them from engaging in the reckless marketing activities that have characterized some insurers in the past. Those irresponsible actions on the part of a few insurers have only served to upset the marketplace to the detriment of all consumers.

Those are my remarks. I will be glad to answer any questions you may have.

Mr Kormos: I get the distinct impression that you are particularly concerned about how the insurance industry spends drivers' premium dollars.

Mr Baizana: Spends them in what sense? It gives them back to the consumers.

Mr Kormos: Whether they give it back to the consumer or spend it foolishly.

Mr Baizana: That is a judgement call. I would not want to answer that one.

Mr Kormos: This ad was in the Windsor Gazette today. I have got a feeling in Ottawa they

are doing it to me. They do not make them full page so I cannot call them full-page ads. They just make them darned near full page. Windsor was two days ago and again it was darned near a full page. The newspapers love us hitting town because they are picking up advertising that they would not pick up otherwise.

Holy cow. In Toronto, I have to tell you, one day and a day's rest and another day, all three of the daily papers had these darned near full-page ads full of stuff and fluff and bluff. They talk about the booklets you can get in the supermarket. I trust they are near the junk food section because what they talk about is Car Insurance: Myths and Facts, and Car Insurance: Ontario's Proposed Changes. If they are not near the junk food section, they ought to be.

How many hundreds of thousands of dollars of drivers' premiums have been spent on these ads in the last three and a half weeks? Do you know?

Mr Baizana: I have no idea.

Mr Philip: You make the point that in your opinion one of the major problems is that seriously injured people have to sue in order to get compensated. I am sure you are aware of the threshold provision in this, in which if you are seriously injured you have to prove that you are seriously injured.

Mr Baizana: Yes, I am.

Mr Philip: We have had various submissions from both the medical profession and the legal profession suggesting that seriously injured people are going to have to sue those very insurance companies that are dragging their heels now, because they are going to say, "You haven't met the threshold," and so you are going to have to sue in order to prove that you have the right to sue.

I can appreciate that you are on the front line and you are as much a victim, because you are the guy who gets hell from the customer when things do not work out. Do you not think it may cause even more problems for the seriously injured if they have got to sue in order to sue?

Mr Baizana: That is a good point, Mr Philip, but as you said, we are in the front lines. We are not the companies; we are not the government. We are in the middle, the front-line troops who have to talk to these 6.5 million consumers around the province and explain why their insurance rates are so high. Honest to God, I tell you from personal experience of about 25 years in the business, the public does not seem to care about benefits. All they are concerned about is how much they are going to pay. Since this bill

was introduced, that is exactly what they are talking about.

Mr Kormos: Victims care about it.

Mr Baizana: Absolutely. We are the victims.

Mr Philip: One last question to you as a broker. I have talked to brokers who are quite concerned. Let me give you an example. I had a woman who had built up a fairly good brokerage business with one or two employees. She made the error—you cannot call it an error, because it is a fluke of nature if you want, or the draw of the cards. She had four or five fairly severe claims.

It is not her fault that out of 2,000 or 3,000 or 4,000 people that she insured, five people happened to get very seriously injured and got major claims by Ontario standards, perhaps not by North American standards. That insurance company withdrew from her and when that insurance company withdrew, a second one withdrew and she was left with one insurance company and that was not enough to make the business work and she is now out of business.

I ask you, is that a possibility? I do not doubt her story but is that the kind of way in which brokers are being treated by the insurance industry?

Mr Baizana: In some cases that is exactly what is happening. We get all kinds of excuses from insurance companies; we are part of the insurance industry as brokers. We have to deliver the product and this is happening. Because of the tight market, insurance companies are withdrawing from the market and they are sometimes leaving their customers and their brokers in the lurch. It is unfortunate.

Mr Philip: She sold her list to another broker. That is all she had.

Mr Baizana: Most unfortunate. Now I say this is the tough marketplace that we seem to be in. Our approach basically is that something has to be done.

Mr Kormos: Brokers and drivers are better off in British Columbia.

Mr Baizana: I might not collect it there, though.

Mr Sterling: What is the general level of compensation for a broker on the premium in automobile insurance?

Mr Baizana: Automobile insurance? The average premium commission on an automobile policy is 12.5 per cent.

Mr Sterling: We heard when the brokers came to Toronto—and I was there for the presentation; Mr Taylor was along as well—they

expected that as a result of this legislation there would be less price competition and that the prices would basically stabilize from one company to another. Do you agree with that?

Mr Baizana: I do not think I am competent to answer that question. Right now there is just no marketplace there for those drivers that I mentioned in my brief. Companies will now accept normal risks and the marketplace will determine competition. Companies want to insure people if they have a stable market.

Mr Sterling: But if you take an individual driver, whatever class he might be, is there going to be much difference between insurance companies as to what the price of that insurance is going to be?

Mr Baizana: Right now there is going to be a difference of \$50 to \$100 a year.

Mr Sterling: But under this legislation is there going to be less or more?

Mr Baizana: I have no idea. I really do not know.

Mr Sterling: Their testimony was that there would be more stabilization in the insurance industry and therefore prices would be more consistent.

Mr Baizana: Companies with a stable market, knowing exactly what their benefits or their costs are going to be, will be able to price their product so that they will make a reasonable return on their profit.

Mr Sterling: But their argument was that in the future, the broker would not make his money by shopping for price but would make it on the basis of service.

Mr Baizana: Service is going to be more important than it was.

Mr Sterling: Then I go to your brief and you say that most of your day is spent chasing down claims, etc. Are you saying that under this new system that is no longer going to be a major part of your day?

Mr Baizana: Chasing down claims from other insurance companies that you normally do not have a relationship with. We hope that when we give advice to our clients to buy from company A as opposed to company B, that is going to be based on the reputation of that company and the service we have had with it.

1420

Mr Sterling: I guess the bottom line of all of this that I am getting to is, is the insurance industry going to need you guys in the end? I have talked to insurance companies and they

have told me there is going to be a shakedown after this goes through.

Mr Baizana: In other words, there are the brokers, who write about 80 per cent of the business in the province of Ontario and 20 per cent is written by direct writers; in other words, the Allstates, the State Farms and Co-operators or what have you. Those percentages have not changed in perhaps 25 to 30 years.

Mr Sterling: That was under a different system. This is a new system.

Mr Taylor: If I could make a couple of comments here, first of all, to put the stabilization comments into perspective, I think we have alluded in this brief, and perhaps in other presentations made before the committee, that in the lack of regulation that we see as being a part of this bill, insurance companies have not acted responsibly in all cases.

In some cases they have tried to buy the business. That means they have charged prices that are far below what is actuarially justified and it creates a lot of confusion out in the marketplace. There is no stability. The premiums are \$500 this year, \$800 the next year, \$600 the year after that. That is not necessarily good competition; it is reckless competition. What we hope will come about as a result of this bill will be a stabilization in the market so you do not have the up and down, roller-coaster ride of rates.

The insurance commission is going to make sure that any rate that carries in the marketplace is going to be actuarially sufficient and sound and that it is going to be neither excessive nor inadequate. It is going to be the right price.

As far as the role brokers will play in the future, there will be lots of optional coverages that will be available to the consumer. I think you will agree with me that insurance is a complex and, in many cases, an unintelligible matter and it will be a broker's role to make sure that every customer gets exactly the right coverage he needs for his own individual circumstances. We talked a lot about the interrelationship between private, paid plans and the auto policy's income replacement provision. These things are going to have to be adjusted on an individual basis and that is the role brokers are going to have to play in the future.

Mr McClelland: Actually, I wanted one of the gentlemen to draw a distinction between the stabilized market and competition. I think you have done it, Mr Taylor, so I will defer to Mr Nixon.

Mr J. B. Nixon: There has been a lot of debate about the results of going from a third-party

liability system to a first-party system; questions being asked as to how can we trust the insurance companies to pay the claims promptly when they do not have a good track record of doing that in the past, not just on third party but, as you know, on first-party no-faults? Mr Justice Osborne commented on the abysmal record that insurance companies have had of paying even the first-party no-faults, abysmally low as they are now. You are right in the middle of that now and you will be in the future. Do you have any comments on what you see for the future?

Mr Baizana: I think Mr Taylor can answer that.

Mr Taylor: I have been interested in the passing references to the government's not paying attention to the Osborne report and I think it is an interesting comment because if you go through Bill 68 you will see the provisions of the bill, particularly the penalties that will be levied if there are not prompt responses to the payment of claims. That is exactly what the judge was referring to. He said that in the provision of benefits, the track record of insurers dealing with their claimants was abysmal. In fact, I believe he also said at one stage of the game that very fact: that he did not have confidence in the insurance industry to treat its claimants fairly and that was the major stumbling block in recommending a no-fault system to begin with in his report.

But all that aside, this bill levies severe fines and penalties against insurers who do not live up to a standard of service that is prescribed by the act. I think that will go a long way to taking away Mr Justice Osborne's concerns about going to a threshold no-fault system. Certainly, as far as the consumers are concerned, as far as the brokers are concerned, if insurance companies do not perform the way they are supposed to perform; if the cheques do not get issued on time; if the people are not treated fairly and with respect, then brokers and consumers are not going to deal with those insurance companies in the future.

Mr Kormos: They do not do it now.

Mr Taylor: I think it goes a long way to alleviate a lot of the problems that exist in the present system and I think the new regime is going to be a lot better for the consumer.

The Chair: Gentlemen, thank you very much for your presentation.

From the Retail, Wholesale and Department Store Union, Mr Ghadban. There are a few seats in the front if you are standing at the back. It is a lot like church, the closer you get the more

intelligent you get, but there is no collection plate.

Mr Philip: The collection plate is \$143 million.

The Chair: The clerk has distributed copies of your presentation to the committee. You have 15 minutes. If you could leave some time for some questions, comments and discussion, we would appreciate it. Please identify yourselves for the benefit of Hansard and then proceed.

RETAIL, WHOLESALE AND DEPARTMENT STORE UNION

Mr Ghadban: Mr Chairman and members of the committee, my name is Harry Ghadban. I am with the Retail, Wholesale and Department Store Union. With me is Mohamad Alsadi, president of our taxi drivers' local that represents about 1,000 drivers in the Ottawa area and drivers in Brockville, Hamilton and London, Ontario. We are here before you today to make a submission on the issue of the proposed no-fault insurance scheme.

The Retail, Wholesale and Department Store Union represents approximately 5,000 working people in this area. A couple of years ago we appeared before the standing committee on administration of justice and made submissions on a no-fault system for the province. At that time we felt that the best way to reduce the escalating insurance cost was to implement a government-run insurance scheme. It is clear to us, as it was then, that the best solution is to remove the profit incentives and create a system that is cost-effective based on operational requirements.

When we first heard that the government was in the process of establishing a no-fault system for the province, we were elated. As we heard more about the Ontario motorist protection plan, our elation turned to dismay.

We had asked for a no-fault plan that is run by a responsible government. We find that the proposed system is to be run by the people who have created the problem: the auto insurance industry.

We had asked for a system that would reduce premiums. The proposed system increases premiums and decreases benefits.

We had concerns about synthetic fleets and individuals operating mini insurance companies often outside the Insurance Act. We see no mention of that situation being rectified. Major fleet owners purchase insurance from the carriers at lower rates because they agree to a deductible of \$5,000, \$10,000 or \$25,000, and they in turn

charge us exorbitant rates and high deductibles to recover their costs and also make a profit.

There are, to our knowledge, only four insurance companies issuing policies to cab drivers in this area. Two of those have given fleet policies to the taxi companies and will not insure individual drivers. For us to tell you that there is no competition in this field would be an understatement.

Our taxi driver members are paying huge amounts of money for little coverage. In some cases the driver is paying \$6,000 and \$7,000 in premiums and he is responsible for the first \$1,500 on any accident, whether he is at fault or not. These deductible amounts are not only applied on collision, but in numerous cases on the liability portion of the coverage.

We do not agree with the proposal that removes the right of the individual to sue for damages, as in many cases that is the only avenue open to the individual to maintain his or her way of life or to seek compensation for pain and suffering.

We do not agree with a ceiling of \$450 per week in accident benefits. People should be entitled to 100 per cent of their income while injured and unable to work.

We do not agree with the premium increases of eight per cent, especially when we feel that there should be a major decrease in premiums. What distresses us the most is that our members and their employers must subsidize the insurance companies despite the proposed increase in premiums. A worker disabled in an accident must first exhaust all sick leave, supplementary coverage and disability pay before he is afforded access to the proposed \$450 per week.

These are benefits hard won through years of collective bargaining and it is totally unreasonable to expect the worker to subsidize the insurance industry. We are already hearing rumours that health insurance rates are going to be increased as a result of this legislation or that exclusions of coverage will be made in cases of auto accidents unless they are work related.

It appears to us that this legislation is beneficial only to the auto insurance industry.

The whole process of insurance reform did not come about as a result of concerns raised by the insurance companies, but as a result of the public outcry towards making the insurance companies accountable for their actions by justifying the premium rates they charge. It certainly looks like the government is solely interested in making these insurance companies profitable, whatever the cost to the Ontario public.

1430

We believe the following amendments should be made to the legislation—I have not put them into legal wording, as if to say that these should be the exact wording for the amendments: that the accident benefit be equal to 100 per cent of the victim's income; that, as a minimum, the equivalent of the three per cent premium tax and the amounts no longer payable to OHIP become reductions in premiums to the motorist and not profits to the insurance industry; that a public study be undertaken to determine the true figures for total premiums, total losses, awards actually paid out, the actual loss ratios for the various areas of the province; that if the government insists on a private sector run insurance system, it cannot be based on the profit margin of the insurance companies; and lastly, to ensure that the system does not adversely affect any other plan or benefit that workers have obtained or could obtain through their employment. Those are our submissions.

Mr Philip: We will let our eminent colleagues in the Liberal caucus go first and then we would be happy to follow them.

Mr Velshi: Thank you very much. You are seeing the light at last.

Mr Philip: No. We just want to correct the mistakes you make.

Mr Kormos: And the last shall be first.

Mr Velshi: I have just two comments here. First, I must say I am philosophically opposed to your statement, "Remove the profit incentive." You, as a taxicab driver, will be the first one to object if we say taxicab drivers should not make any profit. I do not agree with that. Profit incentive is why you are driving a taxicab. If there was no profit, you would not be driving a taxicab.

Mr Kormos: You make profits for the insurance companies.

Mr Velshi: Please, it is my turn, so let me talk.

Mr Kormos: I am sorry.

Mr Velshi: The other thing is, you are talking about a 100 per cent payment payout of benefits instead of the \$450. I understand where you are coming from, but let me give you an example of a drunk driver in his Jaguar going at 90 miles an hour, getting into a head-on collision with Conrad Black. You know Conrad Black; he is perhaps the richest man in Canada.

Mr Kormos: He is not a friend of theirs. Perhaps he is a friend of the Liberals.

Mr Velshi: Okay. If there is no cap on income, he would be able to claim his income every week. I would think that would be about \$10,000 a week or \$20,000 a week. Have you considered that? Who is going to pay for that? All those poor people whom we are trying to protect. Somebody is going to have to pay for everything that we give out.

Are you trying to say that people earning less than \$30,000 a year should be able to finance people like Conrad Black or the Premier of Ontario (Mr Peterson) if they get into an accident through no fault of their own?

Mr Ghadban: I think Mr Black can certainly look after himself, as he has done in the past.

Mr Velshi: But that is what you are saying here.

Mr Ghadban: The situation that we are talking about is that, right now, Mr Black can sue for all of his losses, and I do not think this government should categorize people all into separate categories. I think Mr Black would be in a position to be able to afford the litigation to find out whether he is in category A or category B; whether he is entitled to sue for any of his losses. I am sure Mr Black has got a great number of lawyers who would assist him in that field.

The first part of your question had to do with taxi drivers. Taxi drivers are earning an income, making their living driving the public around. Their rates are established by a municipal government that sets those rates. Those are not rates that are set by the taxi driver and that can gouge the public, as the insurance companies have done in the past number of years. I can give you example after example of how much cab drivers have had to pay, and other drivers have had to pay exorbitant rates, even though they have not had any accidents and have not had any claims. I do not think the inflation rate has increased by 100 per cent in the 1980s. But, certainly, a lot of people are paying more than 100 per cent more for insurance than they were paying late in the 1970s.

Mr Velshi: Thank you. This is what I wanted to hear from you, because, in effect, by us putting in a cap, we are saying to Mr Black and people like him: "You do not qualify for extra benefits. You will have to buy your own premiums for any extra benefits you want." By your saying, "Remove the cap," you are now telling us, "Put Mr Black in with the rest of the crowd."

We know there are problems in the insurance industry; that is why we are introducing Bill 68

and I appreciate your coming over to speak to us about it. What we need is information from you.

The Chair: Thank you. I have Mr Kormos or Mr Philip, and then Mr Sterling for up to three minutes.

Mr Philip: Let Mr Kormos go.

Mr Kormos: That is big of you, Mr Philip. Listen, I still have my cab driver's licence sitting around in a desk somewhere. No one can suggest that cab drivers are anywhere near the Conrad Blacks of the world. Cabbies work long hours.

Mr Velshi: Exactly right.

Mr Kormos: Their hourly pay ends up being minimal. They are abused and, quite frankly, working at not only difficult but dangerous jobs. Cabbies are also professional drivers and display driving skills and talents that, by and large, are not found in the general population. They would not make it from here to the airport in the time I am going to expect them to later today if they did not, and we expect that of them.

My concern is that you come here with some real grievance about this legislation. By and large, the only people the government has got coming to it in this committee saying "You're doing fine, guys" is the auto insurance industry. It is the auto insurance industry, by and large, that comes here patting the government on the back.

Quite frankly it is a matter of looking over the pillow and seeing who is lying in bed with you. It is the consumers, it is the victims, it is the police associations, it is the teachers' associations, it is the trade unions like yours, it is the head injury associations, it is the people involved in rehabilitation, the medical practitioners, the psychologists, the social workers, the therapists who are coming before this committee, outnumbering any of those who would express any support for the legislation, who are telling this government that this is wrong. Quite frankly, it goes beyond being wrong; it is acquiescing entirely to the demands and the instructions and the direction given to it by the auto insurance industry.

I appreciate the comments you have made today. Sadly, we are fighting a very powerful and wealthy industry in this province, one that has cried poverty. For years it has insisted it has not made any money. If it has not made any money, why is it fighting so hard to retain control of the industry? If it is not making any money, why does it not welcome government intervention and say: "Go ahead. We can't make any money selling auto insurance." Run it in Ontario like the Liberals run it in Quebec, as a government

nonprofit system; like the Conservative Party runs it in Manitoba and Saskatchewan, as nonprofit, public, driver-owned systems; like even British Columbia's Social Credit Party—the most right-wing party this country has ever seen except perhaps for Peterson's Liberals—does. They run a public system.

Quite frankly, this government should be taking some lessons from its colleagues the Liberals in Quebec who understand that a public-run nonprofit system is more efficient. We heard that today from the people from Quebec. The Liberals in Quebec had the courage to campaign on the issue of public, driver-owned, nonprofit insurance. The Liberals here have but the interests of the automobile insurance industry. You talk about profits, they are going to create profits for this industry like this industry has never dared dream of; additional profits of over \$600 million in the first year alone out of your pocket.

Mr Ghadban: If I may make a comment on that, Mr Chairman—

The Chair: At the very end. He has eaten up most of your three minutes as well.

Mr Kormos: Will you let him respond or do you want to muzzle him?

The Chair: Mr Sterling.

Mr Sterling: This morning we heard from Dr David Slater, who has studied this matter to some degree and agrees with many of the proposals that the government has put forward. He made two interesting statements. One was that the new system is not going to lower premiums. The other was that there is going to be a necessity for layering of insurance. Have you at all inquired what it is going to cost taxi drivers in Ottawa to properly protect themselves in the future, in that the new insurance scheme will not give them the same protection as now? Have you had any preliminary discussions on this at all?

Mr Ghadban: I can tell you that for the past few months we have been attempting to put together a health insurance package for cab drivers, because currently they are not covered by any sort of health package. In trying to put that together, we have been told by the health insurance companies that they are not prepared to give us anything until they see how this legislation ends up, to see whether it is going to have an effect on the cost to us.

1440

The cab drivers right now are not covered by workers' compensation, so there will not be a first avenue for them to collect. The rental drivers

are covered by unemployment insurance but the car owner, the single car owner, is not covered. So he is not going to have that avenue. The health insurance companies are saying that they either may not be able to give us any coverage or that the rates are going to be quite a bit higher than they normally charge, and they are not prepared to give us anything at this point until they see how this legislation is going to affect that aspect of the industry.

Mr Sterling: So do you see, as a representative of these people, that it is going to be necessary for you not only to buy car insurance, but it is going to be necessary for you to buy other insurance as well?

Mr Alsadi: I think what he is saying to you is that you are making it very difficult for us to get a health plan. It is as simple as that. Because of that new system, these people in the health plan companies are saying to us, "No, we are not going to give you anything until we see what is going to happen with the new system, if it going to go through or not."

Mr Ghadban: I guess I am also saying that we have only two insurance companies that are currently insuring taxis in this whole region and those two establish their own rates. There are no guidelines as to what figures they use. I can show you two people who have the same driving record and have driven the same cab for a number of years and are paying different rates.

Mr Sterling: I would like to straighten this out for you. You know that I am a member of the opposition party and not a member of the government, so when you say "you," I assume you are referring to other members of the committee.

The Chair: Thank you for that point of clarification.

Mr Sterling: I have one last question. On 7 September 1987, Premier Peterson said in London that he had a specific plan to lower auto insurance premium rates. Do you believe this is going to lower auto insurance premium rates for you?

Mr Ghadban: We made a lot of submissions to the standing committee on administration of justice a couple of years ago that really the only way we are going to have rates reduced is for the government to take over this plan. I do not think this proposal does anything except make insurance companies even more profitable than they currently are.

The Chair: Gentlemen, thank you very much for your presentation.

Mr Philip: Your union was also promised no Sunday shopping by the same Premier.

Mrs LeBourdais: He did not promise that.

The Chair: Mr Van Camp, could you make your way to the front? The clerk has distributed copies of your presentation to the committee. You have 15 minutes. If you could leave us some time for some questions, comments and discussion, we would appreciate that. Please identify yourself and proceed.

ERIC VAN CAMP

Mr Van Camp: My name is Eric Van Camp and I am here to talk about what it is like to go through a single-car accident. I will begin.

Late in 1979, I was involved in a single-vehicle accident. It occurred north of Kingston on a winding secondary road, late at night, near the cement railway overpass on an S curve. My car hit a patch of black ice as I came to the overpass and I began to lose control. I quickly turned the steering wheel and accelerated to straighten out the skid, and it did, but not for long. I was skidding again towards the wall of the bridge.

Again I fought the wheel and accelerated to get away from the wall of the bridge and the skid straightened all right—right into the ditch. The car slid approximately 10 feet in the ditch before impacting with the end of a drainage culvert which was covered with fieldstone. When the front of the car struck this it flipped over and spun 180 degrees on its top, causing the roof to cave in in a V over the driver's seat to a point four inches below the driver's door.

Where was I when the car came to rest? I lay across the front bucket seats with my feet pinned underneath the driver's armrest and seat. My head was jammed between the passenger seat and the armrest at a 90-degree angle to my shoulders. I was caught hard and fast, lying on my back, stunned for the first few minutes. Then I panicked as it occurred to me that the car might catch on fire. All I could think of was getting free.

I struggled to get my head free and finally managed by pressing my hands against the door and shoving my back, pulling myself up to a semi-sitting position. I released the seatbelt and took stock of my position. The headlights were still on although the engine had stopped. I could tell there was no possible way of getting out of the driver's door. I turned off the headlights, as they would have shone directly into the eyes of oncoming drivers, and then I turned on the four-way flashers.

At this point I realized something was very wrong. I could not move or feel my feet. I felt along my body from my feet upwards until I could feel my hands pressing my body. I did not want to know what my mind was telling me. Instead, I was trying to think about getting out. I lay down and tried to open the passenger door, and after a couple of tries it did open. By gripping the door sill and rocking the panel, I managed to get myself about a quarter of the way out when my legs and feet became snagged inside the car. I panicked again because I thought the car might catch fire at any time. This time the panic was worse and I realized it was greater because I was alive, and knowing this, I screamed loud and long, near hysteria from exhaustion. I was helpless and I knew it. There was nothing to do but wait until help came. It seemed like eternity before a motorist stopped and said he would summon help.

When I arrived in the hospital emergency room, the doctor examined me but said very little. I knew there was something very seriously wrong. I thought I had broken my back. I found out later that the pivot bone in my neck was broken and lower in my back, between the shoulder blades, three discs, C6, C7 and C8, were crushed. Bottom line: I would never walk again.

After many months of hospital, integration back into society was very slow and emotional, very painful, but I made it. I have been on my own since 1981 and lived well for the first while. Rehab continued after I left the hospital, but nothing prepared me for the problems you meet.

I still have the use of my hands and arms and mentally I am unimpaired. It was a real surprise to experience the attitude that people have towards disabled people and the difficulties to be met in trying to become employed. The attitude seems to be that if you are physically disabled or have a disabling disease, you should not or cannot work.

1450

I thought myself fortunate when I had my accident. My insurance policy had an income replacement benefit which paid me \$140 per week and allowed me to subsist in today's society. The disability pension at the time of my accident paid \$231 per month. My benefits paid \$560 per month. At the time of my accident in 1979, it was a good deal.

You may think that \$560 is a lot of money to do nothing, but you are sadly mistaken. I have all the expenses of normal people, plus excessive drug bills, surgical supplies, plus prosthetic

supplies. That does not leave you much to do anything with—if there is any left at all—to better yourself through education or other means, nor the other small needs any person has. As time goes along, this amount of money buys less and less of the necessities of life. You are penalized through cuts in your income, rent increases, increased food and product costs, gas and insurance increases. How can you live with dignity if you do not have the means to do it?

My insurance policy also had a \$25,000 benefit for equipment and rehabilitation. By today's needs this amount is a joke. Mine bought a house lift, a van for transportation, hand controls, a wheelchair lift for the van, a raised toilet seat and a shower chair. Today, it would buy two thirds of a van or one house lift, one wheelchair, one toilet seat and maybe a shower chair if you were lucky. During the lifetime of a wheelchair person, many of these items will be needed.

As for the rehab part, read "re-education." The doctors and counsellors believe this will open the door for the perfect job for you. This idea is also put forward for children. If it works, why do we have dropouts, large numbers of unemployed and taxi drivers with BAs and MAs? Are they driving taxis because they want to? No. They cannot find work in their own occupation and it is all they could get.

But re-education is the idea. What happens when you do not know what you want to do or what you can do? Pressure to choose. You are bombarded with what you cannot do, but little or nothing is offered that you can do. The irony of this is that these people are walkies. They have no idea what it is like to sit in a wheelchair 24 hours a day, 365 days a year, to exist in this lifestyle.

People have to give people a chance, one way or another, to achieve independence. From my own experience with these insurance benefits—income replacement, supplementary medicare and rehabilitation—I know that the proposed changes will enable future disabled persons to live a happy, independent life, never knowing want, never wondering how they will meet the month-end bills. Hopefully, the new system will be structured in such a way that no one falls through the cracks due to interpretation by insurance companies.

Based on the material I was provided with, I see no-fault as a giant leap forward in insurance. It would enable disabled people to have a more bearable life, independent lifestyle and freedom from financial stress.

Ms Oddie Munro: Thank you very much for your testimony.

One of the aspects of this bill, on the no-fault side, is getting rehab benefits to the injured victim quickly. I was wondering if you could comment on that. I think we understand from your statement how important it is to also have the long-term care and the necessary equipment, but the bill is basing a lot of its recommendations on immediate rehab. I am wondering if you could comment on that. Did you feel comfortable that you got a full range of rehab people working with you?

Mr Van Camp: Not really, no.

Ms Oddie Munro: I think it will be possible in this bill, but I am just wondering what your experience was.

Mr Van Camp: Like I say, when I wanted to make decisions there was only so much funding available for everything. If you wanted to do something, it was, "Okay, if we think you are physically capable of doing it, then we will give you funding for it." It was not a case of saying, "Okay, there is funding available, so let's try it." Concerning programs and the money available, there was not a lot there to give those options to people. You know what I mean?

Ms Oddie Munro: Yes.

Mr Van Camp: So the thing is, hopefully, the system will take this into account.

Mr Philip: You make a very compelling argument for an enhanced no-fault system, which is of course what we in the New Democratic Party have been arguing for for a number of years.

Are you aware that this bill does not provide for any indexing and that the enhanced no-fault which it does provide is provided at the expense of compensation for the kind of suffering you have had? Do you not feel that perhaps if you had been injured across the river and had insurance in Quebec, where the Liberal government there runs a public plan, you would be much better off, with an enhanced no-fault, indexed system that does provide for compensation for the kind of suffering you have obviously experienced as a result of your accident?

Mr Van Camp: I had hoped you guys would make it so. Hopefully, you could work it into the system.

Mr Kormos: We have been trying.

Mr Van Camp: Let's face it, I am just one pawn in the sea of life. I only read the information I have and what I have read was

good. I did not have all the information you guys have.

Mr Philip: We appreciate your sharing your experiences with us.

Mr Van Camp: You are welcome.

The Chair: Albert Roy is next.

Mr Philip: Mr Chairman, I think there is a mistake. It is Albert Roy QC, is it not?

Interjection: Not in Ontario any more.

The Chair: He can correct the record, if he would like.

Mr Roy: You are much too generous. I do not push the QC too hard these days.

Mr Philip: As a distinguished former Liberal member of the Legislature, critic of the Attorney General in the Legislature and a man who was never defeated in his attempts to win re-election as a Liberal member in the Ontario Legislature, I would have thought you might have given him more than 15 minutes. We are certainly anxious to hear what he says.

Mr Ferraro: How come only former Liberal members are distinguished?

Mr Kormos: Mike Ray is doing not bad.

The Chair: As your next campaign manager has indicated, welcome to the committee. The next 15 minutes are yours. If you could leave some time for questions, comments and discussion for the committee, we would appreciate it.

Mr Philip: I enjoyed every speech he gave on Mondays.

Mr Roy: Mr Philip has too good a memory.

ALBERT ROY

Mr Roy: May I thank you, first of all, for the opportunity. Mr Philip mentioned I should have longer, but obviously I am here as a concerned citizen and I very much appreciate any time I can get to say something on such important legislation.

I apologize; I was called up and told, as is the nature of the bureaucratic process, "Please have this in writing, with 25 copies." You understand—my friend Norm Sterling here is smiling—it is difficult in a law practice to just drop everything and make 25 copies of everything. So what I have to say, I hope, will be something that can be easily condensed and will not require something in writing. Besides, I have great respect for our forests and making 25 copies of this and that is, I find, somewhat excessive.

Je voudrais tout simplement aussi faire un commentaire en français. C'est parce qu'on m'a donné tout simplement quinze minutes.

With 15 minutes, it is going to be tough for those of you who know my experience in the Legislature to condense everything in both official languages in 15 minutes.

So with your permission—and I have the group, l'Association des juristes d'expression française de l'Ontario, mes collègues qui vont me suivre. Alors, eux vont parler français, alors —

I will limit myself to one of the official languages, English, so I can get the point of view across.

What I have to say basically—and I hope I am not being repetitious, you have been listening to submissions now for months I suppose—

The Chair: Four weeks.

1500

Mr Roy: Four weeks, okay.

I am sure all of what I have to say you have heard before, but I want to focus on two areas. I am very much aware of the government agenda, I am aware of the promises made by the government to limit increases of insurance premiums and I am very much aware of what is down the line if something is not done. I am aware that the priority is for the over six million drivers in the province to have reasonable insurance premiums.

I am also aware that having embarked on this process, the people who have the highest profile and who are mad at you on this and the ones people are talking about are the lawyers. What a fantastic position for a government to be in, to have the lawyers mad at you. That is a Godsend. You would think it was beneficial politically to have the doctors mad at you. Having the lawyers mad at you is not a bad position to be in as far as the government is concerned. I am aware of that.

I am aware of the agenda that this is going to go forward. Hopefully, what I want to do is just focus on a couple areas of this legislation because I do quite a bit of this work in my practice and I do basically the more serious types of injuries. I just want to show you in a couple of areas where, in your attempt to balance the premiums and to be equitable towards the drivers of this province, at the other end of the scale, you are going to have the victims. There are 100,000 or so people who are going to be injured in motor vehicle accidents.

I am not talking about the 100,000. There are a lot of people who get minor whiplashes. They are off for two or three weeks or for a month, even for a couple of months, and then they are back to work. I am not so much concerned about that particular situation. What I am concerned about

is, your threshold is such that if you do not adjust it, you are going to be cutting out 95 per cent of the claims. But in the process of cutting these people out, there are people—and I am sure you have heard this before—who have serious injuries, are off for two and three years without working but are not considered permanent. This happens and I intend to talk about it just briefly at the end of the presentation. The threshold, in my opinion, is much too severe.

The second thing that is wrong with the threshold is the process of how you get there. As I read it, with my very simple mind, I see a situation where, if a victim starts an action in the process and the defendant wants to challenge this early on in the process, he goes before a judge on a motion and the judge may well say: "No, we think this is the type of injury, it is serious, it is permanent. You go ahead with the action." But what happens is that the defendant does not have to stop there. If he loses at this stage, according to your process, even when a defence motion has been made, he can still make it at trial. The way it reads, he can make it more than once, in fact, at trial.

I ask you and I ask the government and I ask the people who are looking at this legislation, since when do you have a process where the principle of *res judicata* does not apply; that once a decision is made, it is going to be challenged down the line, in fact more than one time?

Since when do you have a process where the plaintiff gets one crack at this particular motion and if the plaintiff is knocked out at the earlier process, he does not get another chance to come back, but the defendant gets two and more times at the process? Since when do we have legislation in Ontario which gives that kind of inequity to the parties in litigation? The defendant has two or more cracks at knocking out one of these cases and the plaintiff has only one. This is patently unfair.

Finally, my concern is on the economic loss in relation to people who do not have disability insurance or some other plan. There are a lot of people in this province who make more than \$25,000 a year and \$450 a week works out in my calculations to something like \$23,000 a year. For a person to collect more than the \$25,000, the economic loss involved, that person must have suffered a serious, permanent, continuing physical injury. I consider that, again, to be very unfair.

Let me give you a concrete example. I have a client who in fact was supposed to be here with me today and I was talking to her this morning.

She is still on disability. Unfortunately, she took medication and she could not make it back here. She has allowed me to use her name and circumstances, just to give you graphically how this plan, the present plan you are looking at, may be very unfair for a person like Mrs Marion Bruyère.

She had an accident in January 1988 at the intersection of Montreal Road and Ogilvie Road. It was not her fault. She is going through the intersection; another vehicle makes an improper left turn; there is a serious injury, cervical strain, neck, back, the whole thing. This was a good business lady, a hairdresser; she had a good business. She has not been able to work now for two years; for two years she has been under disability. She has been getting therapy, doctors, the whole bit.

Her income was in the \$50,000-\$60,000 range. Over a period of two years, this lady has lost something in the order of about \$120,000. That has been her loss, through no fault of hers. Under your plan, under the plan that you propose, she has no disability insurance. She cannot get unemployment insurance; she was an employer. Under your plan, she can collect, at \$450 a week for 104 weeks, only \$46,000. She loses \$73,000-something under the plan that is proposed. I ask you, is that fair? This lady, through no fault of hers, gets into a situation like this. Is that fair?

This lady has been off for two years. She has gone through the whole process. For personal injuries, we are just getting ready to go trial now; we are in the process of negotiation and so on. Her claim for general damages would be in the \$25,000 range. Under your plan she gets zero because her claim is not considered permanent. All the doctors say, "Yes, it is serious, but it is not permanent." So she gets zero. I ask you, is that the type of plan you want in Ontario? Is this the type of individual whom you want to exclude? This is clearly unfair.

What I suggest is that you do something about the threshold. One suggestion is that instead of saying "permanent serious impairment," you write in there "permanent or serious impairment." Just put the word "or" in there, and give consideration as well to mental and psychological injury, which often flows from these cases. Second, for God's sake, when someone is injured in a motor vehicle accident and has no other plan, no disability plan, no right to unemployment insurance or any other plan, why should that person not be able to claim economic

loss? Why should that person be excluded unless it is a serious permanent injury?

That is my concern. I have more. You have heard them all. But I really think that in those areas, if you are going to proceed with that, surely there is an element of equity that you must look at. That is my concern.

Mr Philip: Mr Chairman, you have just had an ample demonstration of what a good education at the University of Ottawa can do for someone.

Mr Roy: You are right again.

Mr Philip: You are as erudite as ever. My question to you is this—and I would love to explore some of the things about which we had an opportunity to discuss over a coffee in the hall, about our problems with the bill—as a practising lawyer dealing with this and examining the bill as it presently stands, particularly with a focus on the threshold and the no-fault provisions, is this going to mean more litigation rather than less litigation? The argument by the government is that this bill is going to cut out some of the extra costs of lawyers' fees and litigation.

Mr Roy: I would like to just make a distinction between lawyers' fees and litigation. Let's be fair about this. A lot of lawyers are involved in the processes of personal injury claims. A very small percentage of these cases go to litigation. I would think there would not be five per cent of the cases that go to litigation in personal injury claims, so let's be clear about that, but there are lawyers' fees involved in negotiations and so on. There are going to be far fewer cases, but they are going to be major cases. But the litigation that is going to be involved in trying to determine what is a permanent serious impairment, and then the two-stage process—

1510

Mr Philip: Double jeopardy.

Mr Roy: The insurance companies are going to have a field day on this, because with the money they are all going to save from giving out money for claims for general damages, they are going to be able to focus in on really fighting this and trying to narrow it down as much as possible. Of course, the bar is going to try to enlarge it. I mean, it is normal that—you try to have a system which is as fair as possible.

I do not know that this threshold is used in any other jurisdiction quite this way, so I do not know of any other precedent that would be all that helpful when you are litigating this, but I ask you again: In cases like Mrs Bruyère's, if you want to exclude the small cases, and there are thousands and thousands of minor injuries but not cases like

that—surely you have to do something about the threshold.

Mr Sterling: I thought your opening comments with regard to the copies was quite good, Albert. I do not think you have ever made one copy in any submission you have ever made, let alone 25.

Mr Roy: You are probably right.

Mr Sterling: We have heard a lot of witnesses in front of the committee and we have heard a lot of examples. The problem is that this plan as it is structured has nothing to do with equity or fairness in terms of the ultimate situation.

I think Ralph Nader, when he was in front of the committee about two weeks ago, said that the states that went to no-fault went to no-fault because innocent people were getting hit in automobiles and they could not get them into the hospitals because they could not take care of their medical problems. He said that none of the states is going towards that. The trend is away from no-fault systems, and the premiums are higher in those areas.

So it is a difficult one to do. I see it, quite frankly, as a Premier (Mr Peterson) trying to live with an unrealistic election promise. He said these words, that he had a specific plan.

The fact of the matter is that if there are more claims, there is more property damage. Somebody has to pay, and it is either that you and I pay through our taxes—by doing away with the subrogation agreement, it is going to cost the taxpayer \$90 million more that insurance companies were paying to the Ontario government for OHIP benefits. They are wiping that off. They are saying, "Okay, \$90 million; here you are, insurance companies." They are wiping away the three per cent. They are saying, "Here's \$140 million more." Those are the two things we know about. We do not know what the workers' compensation benefit is.

It is an extremely difficult situation that they have got themselves into. I do not know if there is any answer to it in terms of the way you have put it forward. Cover your client.

Dr Slater was here this morning. He is saying that your client has to be knowledgeable enough to go to his or her broker and get additional insurance. You know from your practice that the average small businessman who is starting out does not have that kind of dough. So I do not know where you go on it.

Mr Roy: I just want to say I do not have experience in insurance, but you know that if you are going to get disability insurance at the level we are talking about for this lady here, or at any

reasonable level, someone is talking about \$25,000 or over. Of course, that is going to be a godsend to the insurance companies as well, but anybody involved in insurance from now on in this legislation had better have disability insurance, because you are going to have serious problems. Surely you are looking at extra premiums of \$1,000 to \$1,500. That is what you are going to be looking at.

But I know the agenda of the government. I know the commitment that has been made by the Premier, and I told him myself. I told him personally exactly what I am telling you here today. When you are adjusting this legislation and when you are attempting to be fair to the drivers of the province, I cannot believe that in the process you would be so unfair or unjust to people down the line, the victims of the process. That is what I am saying. There are a certain number of victims who will have to be excluded. It gets to be a matter of degree, but I cannot believe that in Ontario you would exclude people at the level I have just pointed out, this lady here. I really do not think that that is what you had in mind.

Mr J. B. Nixon: Albert, did your client own her business or was she an employee?

Mr Roy: She originally owned a business, and when she owned a business she was making even more money, but just at the time that she was injured, the business had been sold and she was working as an employee.

Mr J. B. Nixon: You may not know that in the case of an employee, the \$450 a week wage-loss coverage is net of tax, so it is really equivalent to about \$29,000. That is what it grosses up to.

Mr Roy: It is still half of what she was getting.

Mr J. B. Nixon: I understand that.

Dr Slater was here today and has made the argument that the government has made in the past, that this provides full coverage for 78 per cent of the working people in Ontario. The question then becomes: Why should those who are covered by the \$450, the lower- to middle-income people, pay higher premiums to ensure that the high-income people get full wage-loss coverage? Would it not be better to ensure that, as an option, when you are buying your automobile insurance, you can buy additional wage-loss coverage—not disability insurance, just additional wage-loss coverage as an option?

I recognize the concerns about information in the marketplace. The broker is going to say, I think, as an opening with his or her client: "How much are you making? This basic insurance

product will give you coverage up to about \$29,000. Are you making more than that? I think you should pick up the excess wage-loss coverage option."

Mr Roy: Yes, I understand what you are saying, and that is certainly going to have to be done to protect them, but the bottom line is that you are telling the public of this province that you are limiting insurance premiums and you really are not. You are saying, "We're limiting them for your car, but you'd better get extra premiums if you want to cover your wages."

That is where I am saying that in the process of having equity, I do not know that you should necessarily do it that way. You might be better off overall to have your premiums just maybe a bit higher and then allow the innocent party who has a wage loss in excess of your no-fault benefits, no matter how serious the injury, to claim this loss of wages. To me, that is the system we have now; that is a system that works. You are suggesting another system, basically.

Mr J. B. Nixon: Yes.

Mr Roy: It pretty well conforms to what I was saying. I was saying to people, "With this plan, from now on you had better—" Even at that, Mr Nixon, do you think it is fair for this lady to get zero for pain and suffering for two years? Do you think it is fair? I ask you.

Mr J. B. Nixon: I am happy to answer. There are real philosophical arguments about the appropriateness of compensating for pain and suffering. I know you went to the University of Ottawa, but Jim Dunlop, who teaches at the University of Toronto law school, made the argument way back in 1975 before the Ontario Law Reform Commission—and it accepted it—that money is not solace for pain and suffering. True solace for pain and suffering is the notion that you have full rehabilitation, full care and full medical expenses to get you back in the workplace or back to your family as soon as possible and made as whole as possible. That is the solace and compensation for pain and suffering. The notion that people should be entitled to money and to pursue that in the court is counterproductive, from a social point of view.

The Chair: I am going to have to interrupt there.

Mr Roy: Can I just take the last word?

The Chair: Probably not. Thank you very much for your presentation.

Mr Roy: Mr Nixon and I would have had an interesting discussion here. You allow pain and

suffering for the more serious injuries. You are being—

1520

The Chair: Thank you very much.

Mr Roy: Thank you very much for hearing me out.

The Chair: The next group is l'Association des juristes d'expression française de l'Ontario. Gentlemen, the clerk has distributed copies of your presentation to the committee. We have 15 minutes, and if you could allow some time for questions, comments and discussion, we would appreciate it. Please identify yourselves for the benefit of Hansard and proceed.

L'ASSOCIATION DES JURISTES
D'EXPRESSION FRANÇAISE DE
L'ONTARIO

M. Guénette : Mon nom est Gilles Guénette. J'ai avec moi mon confrère Pierre Lavigne. Nous sommes les délégués de l'Association des juristes d'expression française de l'Ontario, auprès de votre comité. Je vais vous faire notre présentation principale et mon confrère Pierre Lavigne répondra à vos questions par la suite.

Depuis sa fondation en 1980, l'Association, composée de quelque 500 juristes, travaille à la promotion des services juridiques en français et à assurer un accès égal à une justice dans les deux langues officielles des tribunaux judiciaires — l'anglais et le français — sans pénalité, délai, obstacle ou hésitation à l'utilisation du français par l'appareil judiciaire, les membres du Barreau ou la population francophone de l'Ontario.

C'est à titre de porte-parole de la population francophone de l'Ontario que nous intervenons aujourd'hui devant ce comité permanent des affaires gouvernementales de l'Assemblée législative de l'Ontario.

La position de base : l'AJEFO prétend que le projet de loi 68, tel que rédigé, a pour conséquence de mettre en danger un droit acquis important des francophones de l'Ontario. En effet, la présente réforme, en éliminant, sauf exception, le recours des Ontariens aux tribunaux judiciaires pour la compensation des préjudices subis à la suite d'un accident d'automobile, élimine le droit à la grande majorité des accidentés francophones aux services en français, services qui leur ont été garantis par la Loi sur les tribunaux judiciaires. Le projet de loi remplace ce droit par la discrétion et la volonté des compagnies d'assurance.

Jusqu'à présent, la victime francophone d'un accident d'automobile avait droit à un recours judiciaire pour obtenir un dédommagement pour

le préjudice subi. Conformément aux articles 135 et 136 de la Loi sur les tribunaux judiciaires, qui font que l'anglais et le français sont les deux langues officielles des tribunaux judiciaires, cette victime avait droit à un procès et à toutes les autres procédures afférentes à sa réclamation en français. Le cas échéant, la victime avait le droit d'être entendue à la Cour d'appel de l'Ontario en français. Bref, la victime avait un accès à la justice égal à celui de son concitoyen anglophone.

Ces droits linguistiques des francophones dans le domaine de la justice ont été durement acquis après des décennies de revendications et octroyés par l'Assemblée législative avec l'appui des trois partis politiques. Or, la présente réforme prévoit que les compagnies d'assurances seront désormais responsables de reconnaître et d'administrer la compensation des préjudices subis lors d'un accident d'automobile. Leur tâche remplace ce qui était auparavant accompli par les tribunaux. L'assureur serait le seul responsable du traitement initial de la demande, ce qu'il peut faire exclusivement en anglais. Aussi, le droit de communiquer et de recevoir des communications en français est à la discrétion de l'assureur.

C'est en raison de l'absence de la garantie à des services en français que l'AJEFO fait les recommandations suivantes : 1, que les pouvoirs du surintendant des assurances, prévus à la partie 1 de la Loi sur les assurances, comportent la responsabilité de vérifier qu'une version bilingue des dispositions figurant à l'annexe C de la même loi soit incluse dans chaque contrat d'assurance émis ; 2, que les compagnies d'assurances soient obligées par la loi de répondre en français aux communications qui leur sont adressées dans cette langue ; 3, que tout règlement établissant ou modifiant l'annexe des indemnités sans faute soit adopté en anglais et en français, afin que les deux versions, anglaise et française, soient officielles.

Remarquez que dans la présente Loi sur les assurances, l'annexe C fait partie du texte législatif. Conformément à l'article 4 de la Loi sur les services en français, cette annexe et toute modification apportée auraient été adoptées en anglais et en français à compter de 1991. Le projet de loi, dans son texte actuel, relègue le texte de l'annexe des indemnités à un texte émis par le conseil exécutif, c'est-à-dire à un texte réglementaire, dont la version française n'est pas assurée d'exister ou d'avoir une portée juridique égale au texte anglais. Est-ce vraiment l'intention du législateur de procéder à cette dilution du texte français de l'annexe des indemnités ?

4. Que le texte du paragraphe 4(2) du projet de règlement, soit l'annexe des indemnités sans faute, soit modifié pour assurer que la copie de l'annexe envoyée à tous les détenteurs de police soit le texte anglais et français; 5, que l'article 203 de la Loi sur les assurances soit modifié en ajoutant après le paragraphe 203(1) un article interdisant l'approbation sans que le document soumis pour approbation ne soit en anglais et en français. En ce moment, les formulaires ne sont soumis qu'en anglais, donc aucun texte de police d'assurance approuvé par le gouvernement n'est disponible dans l'autre langue.

L'Assemblée législative s'est faite défenderesse des droits de la minorité francophone en garantissant l'accès aux services du gouvernement en français – la Loi sur les services en français – ainsi que l'accès aux tribunaux dans les deux langues – la Loi sur les tribunaux judiciaires.

Cette politique de justice et d'équité envers les francophones de l'Ontario exige, pour être maintenue avec intégrité, qu'un effet indirect et créé par inadvertance, mais certain et néfaste, du projet de loi à l'étude soit corrigé. L'effet anticipé touchera sérieusement la population francophone, puisque 50 pour cent des dossiers de contentieux civil devant les tribunaux ontariens impliquent des accidents d'automobiles.

Tous les francophones qui utilisent à cette fin le système judiciaire n'auront désormais plus accès aux services dans leur langue, à moins de porter systématiquement toute décision de leur compagnie d'assurance en appel devant la Commission de l'assurance automobile, un résultat absurde que le législateur ne désire sûrement pas. À l'heure actuelle, les francophones jouissent d'un droit au français que le projet de loi, s'il n'est pas modifié à cet égard, diluera en une discrétion de l'assureur.

Le justiciable francophone ne peut pas se fier au bon vouloir de l'entreprise privée pour faire respecter son droit au français avant la réforme de l'assurance automobile et ne pourra pas davantage s'y fier à l'avenir. Ce serait là un pas de géant vers l'arrière. Les lois du marché fonctionnent au profit des grands nombres, et les francophones, en tant que minorité, ont besoin de la garantie du législateur pour sauvegarder ces droits. La philosophie qui inspire la Loi sur les assurances et le projet de loi 68 démontre que l'Assemblée législative accepte comme son devoir d'intervenir pour réglementer les lois du marché dans le domaine de l'assurance, et il est très important qu'elle accepte en l'instance de réglementer afin de protéger le droit acquis des francophones. Il

est essentiel que l'Assemblée législative évite de renier et d'abolir, par inadvertance, les droits que, dans un esprit de justice, elle a accordés aux francophones de l'Ontario.

En conclusion : avec un esprit de collaboration et le désir d'améliorer le projet de loi, l'Association des juristes espère avoir aidé les membres du comité dans leur travail et les remercie de leur aimable attention.

If I may depart from the written text for a moment, you can easily imagine what happens with our preoccupation with images. Just imagine that the insured is a francophone and that he wants to make his claim to his insurer in French, but he happens to be in Sault Ste Marie. He might not be well received.

That is our presentation. Thank you very much for your attention.

1530

Mr Philip: My question is to the parliamentary assistant, perhaps for some clarification, because I think some good points have been made by our deputant.

I can understand perhaps section 4 of the Attorney General's bill vis-à-vis the translation of all statutes, but why is it that in the case of important legislation they could not have been printed immediately in English and French and both languages used? Luckily, people such as our present deputants are fluent in both languages, but many people are perhaps being deprived of an opportunity by not having this legislation in the two official languages. I realize that you are not the parliamentary assistant to the Attorney General, but you are a member of the government, and I ask whether you can clarify that.

Mr Ferraro: Thank you, Mr Philip, for allowing me the opportunity. Without patronizing the gentlemen, they certainly do have legitimate concerns, shared, I am sure, by the vast majority, if not all, of the members of the Legislature. The reality of the situation, let me say first and without qualification, is that the commission to deal with that issue first of all will have French-language services immediately, and indeed the responsibility of ensuring rights to the francophone Ontario population hopefully will be treated the same way as English Ontarians are treated in the same commission. That is the first thing.

The second thing, as certainly most people in the room know, is the agenda for legislative counsel. Legislative counsel, as Mr Philip alluded to, is responsible for the translation. It is the intention of the government to try to press as quickly as possible to get the translation. With

great respect, how do you tell a minister or anybody that one piece of legislation is less important than the other? I think it is incumbent upon us to do all the legislation as quickly as possible.

Having said that, we expect that within one year, if not sooner, the legislation will be translated into French. You can argue that it is not quick enough and I will certainly convey concerns with regard to this legislation back to the powers that be and hopefully they can expedite that. Finally, the schedule and indeed the policy and the forms that Mr Philip alluded to must be produced by legislative counsel separately from the bill, because it is an act, it is a law of the province of Ontario, assuming its passage, and indeed we want to make certain that full and equal rights, according to the words, are in both official languages, if you will.

The forms and the policy, as opposed to the bill itself, can be expedited much more quickly because the government will be producing those almost immediately, subsequently to the passage of the bill.

Mr Philip: By way of supplementary to the parliamentary assistant, if we have already—and we have—published some bills in both English and French, why could we not publish this one, particularly since it was fairly obvious this was going to public hearings and people should have an opportunity to read bills in their own language?

Mr Ferraro: I cannot really answer that, save and except to say that we hear your concerns. Maybe Gillian can enlighten me a little bit here.

Ms Burton: Yes, there was a request to legislative counsel's office to produce a translation, but quite within its rights it said, "Until a bill is finalized, we do not like to translate it." Because this committee, among others, may well be amending the legislation, legislative counsel felt that the resources they had did not allow them to devote—

Mr Philip: How do you propose amendments if you do not have the bill in your own language and therefore are not in a position to propose the amendments in one of the two official languages?

Mr Ferraro: I think it is a valid point, quite frankly, and I guess the only thing I can say is it is regrettable that we did not. There is no way of skirting the issue.

Ms Oddie Munro: I think the idea has merit, too, and I do not think there was any intention to avoid it. I think some of the other information has been translated, or will be translated, as far as

information packages are concerned. I also think it could be a relatively simple thing at least for the working documents to be translated immediately into French. I think you are the first group that has asked for it. It is such an obvious thing, and obviously the parliamentary assistant has taken you and your recommendation seriously.

Mr Lavigne: The lack of translation is a minor thing at this point. We are looking to the future. We understand that it is not a preoccupation necessarily of the Legislature to look out for every tiny crack that might slip through a piece of legislation. That is one of our functions, to vet these things and to bring to your attention items which may, by completely innocent inadvertence, have slipped through. We believe this is one of them. We are a group of lawyers representing lawyers who provide French-language services in Ontario. We leave to others comment on the merits of the bill from the legal point of view. We address simply the French-language issues.

Francophones in this province fought long and hard and obtained, with the consensus of all, quite equitable legislation in the Courts of Justice Act with respect to access to the courts in their language. It provides for bilingual trials, and no one is denied access in his language.

Now, one of the byproducts of this bill will be to eliminate 50 per cent of the civil lawsuits which would normally be brought by francophones for the recovery of these types of injuries. They will now be directed to a method of compensation which is their insurance company. We will not make comments on the merits of that. However, if you look at the process, there is a danger here of a distinct erosion of minority rights by inadvertence.

Right now, francophones in Ontario have the right to obtain compensation for personal injuries in their language before the judicial apparatus. You are now, by this bill, replacing the judicial apparatus with the private sector. It is a fallacy to say that it is the private market, you know, just go to whoever gives you the service. That is what we are complaining about. We have a right and it is being replaced by a discretion of the market. We simply want an equivalent right in the legislation.

Now, the proposals that we have made are quite concrete with respect to the act and the amendments. With respect to the translation, originally schedule C was a schedule to the statute. As a statutory instrument under the acts of the Legislature, by 1991 it would be required to be translated and every amendment would also be subsequently translated. So if ever there was

litigation, either before the commission or before any other court, we would have the document.

For reasons which are probably quite practical, because maybe the benefits will change too frequently to use the legislative mode to amend it, the schedule of benefits has been put into the regulatory mode as opposed to the statutory mode. Regulations are translated on the discretion of the Attorney General and on acceptance by the cabinet. So here we have what was previously a right being translated into a discretion. That is an erosion of a minority right which has been acquired.

With respect to the draft regulation right now—and this is why we think it is so important to have a translation of the schedule of no-fault benefits—section 4 of the draft regulation right now will require every insurance company in Ontario, within 180 days of the passage of the act, to send to all of its insureds a copy of the new schedule of benefits. We believe it is imperative that it be translated prior to that mailing and that the mailing be bilingual so that all francophone insureds of Ontario will know what their rights are under the new system.

1540

This is a very special act. The government quite laudably provides many French-language services, and most of its publications, including the one before your committee right now, are in both languages. It would be a regrettable, inadvertent lapse if the single largest statutorily mandated mailing in this province were to be made unilingually.

The Chair: Gentlemen, thank you for your concerns and your brief. The points have been well taken.

From the Ontario Professional Fire Fighters Association, Mr Stevens. We have circulated some copies of your presentation. You have 15 minutes. If you can leave us some time for comments, questions and discussion, the committee would certainly appreciate it. Identify yourselves for the benefit of Hansard and then please proceed.

Mr Stevens: A point of correction, Mr Chairman. It is the Ottawa Professional Fire Fighters Association, not Ontario.

The Chair: I am sorry, the Ottawa Professional Fire Fighters Association.

OTTAWA PROFESSIONAL FIRE FIGHTERS ASSOCIATION

Mr Stevens: My name is Preston Stevens. My occupation is a firefighter here in the city of

Ottawa. I am also president of the Ottawa Professional Fire Fighters Association.

Before I commence my brief, I just wish to tell you that I am not totally opposed to a no-fault insurance plan in general. I believe it can become an acceptable auto insurance plan. My comments are not to be construed as criticism of no-fault insurance, but this particular version is of major concern to me. If this scheme goes through as is, I and the people I represent stand to lose significant rights and benefits that were won through the collective bargaining process and are now taken for granted.

I represent over 600 firefighters in the city of Ottawa. I believe I can also speak for every other firefighter organization not represented here today, because we all stand to lose equally through this legislation.

Of all the debate I have seen, heard, read about, like every average citizen, it is interesting that almost without exception the only supporters of Bill 68 are the Liberal members of the Legislature and the auto insurance industry. The insurance companies are silent because of the proposed financial windfall that the provincial government will hand them. Do the Liberal MPPs honestly believe this to be a fair system?

I will speak on the issues that directly affect the members of my association.

Disability insurance and income continuation: Weekly no-fault benefits are only paid after all income continuation benefit plans are exhausted. We have fought hard for these benefits in order to protect the interruption of our members' incomes due to sickness. They were not meant to be used for losses incurred in vehicle accidents, because the auto insurance industry has taken on that risk and collected premiums from our members for that purpose. If these losses will no longer be covered under the proposed plan, it clearly has to be more costly to employers to provide these income continuation benefits. I think you realize that in the end our members will be asked to bear all or part of that increased cost.

Sick leave: Our members will be asked to exhaust sick leave credits before any no-fault weekly indemnities are payable. The sick leave legislation is different in respect to those benefits as opposed to other income continuation plans. In this case, only amounts received by way of sick leave benefits will be deducted from no-fault benefits, rather than received by or available to. But in spite of this wording, the effect will be no different. Those benefits will have to be exhausted. In most cases a firefighter cannot take leave without pay if sick leave credits exist. By virtue

of the collective agreement, he has no choice but to utilize his sick leave until exhausted.

The unfairness can be illustrated in the example of a member injured in one year and being forced to use up accumulated sick leave. If he becomes sick or disabled in the next year, he will have nothing to protect him against the resulting loss of income. In fact he could be superannuated. The no-fault benefits will not be available because the sickness or disability did not arise by virtue of a car accident. While we are covered for both now, we will be covered for only one in the future in spite of paying for both forms of protection by auto premiums and earned sick leave credits.

Basically, the government wants to indemnify the auto insurance industry with accumulated sick leave we have earned through years of work.

Weekly no-fault benefits: The current benefits of \$140 per week have long been considered inadequate. However, the fact that victims can sue for income loss in excess of those weekly amounts has meant that there has been little pressure to alter the weekly amount. However, now that it becomes a full income replacement, other than personal disability insurance, that amount bears scrutiny. Both commissions set up by this government have recommended increases in the weekly indemnity significantly higher than what is proposed. There is nothing in the legislation to allow for inflation. If history is our guide, we can expect no increases. The \$450 is inadequate and will become more so with time.

Economic loss: Under our present system, all victims are entitled to recover any economic loss arising out of an auto accident. This includes all loss of income. Justice Osborne, the former chairman of the Inquiry into Motor Vehicle Accident Compensation in Ontario, in his review of other no-fault plans found that in every jurisdiction where there is a threshold the ability to recover economic loss is preserved. He has stated that making people whole economically should be the point of emphasis of compensation systems. He also said that this system is grossly deficient in that regard.

On the other hand, in pure no-fault schemes, with no ability to sue and recover compensation whatsoever, the plans provide for substantially higher income loss benefits than what is proposed in this plan. In this hybrid scheme a huge gap has been left. It must be filled. Either the weekly no-fault benefits must be increased or the right to recover economic losses must be preserved. Ideally, both should occur. No-fault benefits provide an income of \$23,000 per year.

Nobody in my association makes less than that amount. As a matter of fact, the probationary firefighter is in the \$30,000 range and at 80 per cent he still comes above the \$23,000.

Ms Oddie Munro: That is without tax.

Mr Stevens: Is it right that they should have to purchase additional disability insurance to cover any shortfall? So much for keeping insurance rates down. It is impossible to get disability insurance that covers 100 per cent of loss of income. As a result, victims will never be fully compensated unless the threshold is amended to allow them to sue for economic loss.

Workers' compensation: Firefighters who are presently injured in the course of their duties in a motor vehicle accident and are protected under the workers' compensation scheme can elect to receive workers' compensation benefits or sue for damages. They will lose this option. This will mean the workers' compensation scheme will have to bear a larger portion of the costs arising out of vehicle accidents. This in turn will increase costs to the employer who funds the scheme. Ultimately, this means less money available to my members' salaries and other benefits.

OHIP: Presently auto insurers indemnify OHIP for all medical expenses paid by OHIP arising out of auto accidents, estimated to be some \$90 million per year. The employers will absorb this under the proposed scheme. For them to bear this cost means less money available to improve benefits through collective bargaining.

Threshold: Clearly, the government has chosen to limit auto insurance payouts by use of a threshold; only the most seriously injured will be compensated. Under the proposed scheme, 97 per cent of all accident victims will no longer receive compensation. Only if death or serious and permanent injuries occur will a victim be able to recover such losses. Will it take a court of law to determine what is permanent and serious? It will be economically unfeasible to pursue such claims except in the clearest cases.

1550

My conclusions are as follows:

Under this bill, people will be paying as much as they are paying now, plus as much as eight per cent. There is no guarantee of controlled rates after this year. They will never be able to recover their full economic loss arising out of an auto accident. The cost of compensating people involved in auto accidents for their economic loss will have to be borne by themselves.

Provincially, people will pay higher premiums, receive far less than they do now, and in

most cases will never receive anything from their auto insurer.

The government has seen fit to introduce this hybrid scheme and by doing so has disregarded the recommendations of two boards of inquiry commissioned.

In a pure no-fault system all victims are compensated for both pain and suffering and income loss. No victim is entitled to recover anything else. The benefits are less than what we can now expect, but all victims are compensated and there are fewer legal complications.

In threshold plans only the most seriously injured are entitled to be compensated for pain and suffering. All others can receive nothing in that regard, but those plans still place emphasis on making people whole economically.

Both have respective tradeoffs. On the one hand, in a pure no-fault plan there may not be complete economic recovery, but there is entitlement to compensation for pain and suffering. On the other hand, in a threshold system most can no longer be compensated for pain and suffering, but at least there is economic recovery.

Under the proposed scheme, this government is asking the people of Ontario to give up both compensation for pain and suffering and economic recovery, all in exchange for an eight per cent increase in premiums. This does not make any sense.

I believe the proposals should be trashed and the government should look to the advice of its two commissions.

However, if it insists on implementing this plan, it must not do so without the following changes: (a) The threshold must include the right to recover any and all economic loss arising out of car accidents; (b) the threshold to sue for general damages for pain and suffering must be amended to include death, serious disfigurement and serious impairment of body function; (c) the weekly no-fault benefits must be substantially increased and indexed for inflation; and (d) sick leave benefits must not be deducted from any recovery, whether by way of no-fault benefits or for economic loss.

On behalf of the Ottawa Professional Fire Fighters Association, thank you for your time. If there are any questions, I would be only too glad to answer them.

The Chair: Thank you. I have Mr Sterling, Mr Sola and Mr Philip for two minutes.

Mr Sterling: I am not going to take two minutes, I am just going to say that my party agrees with the position you put forward and I thank you for your participation in the hearing.

We have heard from a number of professional and union organizations and they are basically saying the same thing, that this is unfair to your collective agreements. It is an unfair compensation scheme for the people of your association regardless of the deal you have made in the past.

Mr Stevens: Yes.

Mr Sola: I would just like to ask a question. You said that right now your members have the choice or the option of suing or taking the workers' compensation benefits. In your experience, how many choose to sue over taking workers' compensation?

Mr Stevens: Obviously, you are only going to sue if you believe you have been wronged. If an accident is your fault and the police indicate that, you are obviously not going to sue the third party, you are going to stick with the workers' compensation benefits. The fact is you have the option right now and we are going to lose that option. That is what scares me the most.

Mr Sola: But you have not answered the question. You are saying it is going to cost the Workers' Compensation Board more. In making that statement, you must have some previous history of where your members have opted to sue rather than take workers' compensation. Otherwise, you are making a statement that has no basis to it.

If under the present system your membership has not decided to sue, why would it come to a situation in the proposed system where they would decide to sue and be denied that right?

Mr Stevens: I have one member right now who has chosen to sue because he was involved in an automobile accident in the course of his duties. He is suing to recover all lost sick leave. He has been on sick leave now for five months because of a neck injury. He believes he has the right sue to recover that cash payout for lost sick leave, which he can hopefully invest to protect for future losses.

Mr Philip: I agree with your presentation, with the exception of one point in which you say that it will result in people paying an eight per cent increase. In fact, the figures here show an eight to 50 per cent increase, so may be higher than what you think.

Mr Stevens: I stand corrected.

Mr Fleet: That was not good news, but—

Interjection: It is the truth.

Mr Philip: You make an excellent point. The government used this over and over again, and unfortunately some of the media have picked it

up, that this is a no-fault plan, but this is not a pure no-fault plan. I gather that if it had been perhaps a more comprehensive, full no-fault plan, you might have looked more favourably on it, is that correct?

Mr Stevens: That is correct.

Mr Philip: You make the point that I was making earlier concerning an employee of mine, and that is that this plan will basically force more people on to superannuation, on to Canada pension and so forth, because they will use up their sick benefits. They will have none of that left if they happen to have an automobile accident early in their career or before they have a stroke or a heart attack or other illness.

Mr Stevens: That is right. If they are put on long-term disability, they could, in effect, lose their job. If they cannot do their job function any more, they lose their job.

Mr Philip: From your own experience in dealing with your own members, would there be a large number of people this would happen to? Are we talking about two per cent, 10 per cent? I know of one person it would affect. Of course, I only have four employees, so that is 25 per cent. Do you know a handful of people from your experience that this would have affected, or 10 or a dozen or what are we talking about?

Mr Stevens: I cannot put a figure on it, but the fact is the implied threat is there that they are going to lose their job as a result of this bad legislation, in a worst-case scenario. That is why I am here today, to try to alter the viewpoint of any of the committee members.

Mr Philip: Thank you for an excellent brief.

The Chair: Mr Stevens, thank you very much.

Now we have a representative from the Ottawa-Carleton Board of Trade. I believe the clerk has circulated copies of the presentation. We have 15 minutes. If you could leave us some time for questions, comments and discussion, we would appreciate that. Also, you could identify yourself for the benefit of Hansard and then please proceed.

OTTAWA-CARLETON BOARD OF TRADE

Mr Beaudry: My name is Paul Beaudry. I am the chairman of the provincial affairs committee for the Ottawa-Carleton Board of Trade.

Good afternoon. On behalf of the Ottawa-Carleton Board of Trade, we appreciate this opportunity to appear before you to present the views and concerns of our 2,300 members on this issue of critical importance. We wish to indicate

that our submission also reflects the concerns of the members from the Kingston District Chamber of Commerce.

The members of my committee, as well as the executive of the Kingston chamber of commerce, have studied the proposed legislation with regards to its effect on our members and indeed the Ontario population. The proposed legislation gravely concerns us with regard to increased financial burden on both the citizens and the government of Ontario while decreasing the benefits of auto insurance. Our concerns are as follows:

1. The institution of a no-fault plan is contrary to the recommendations of previous commissions. The commissions, which cost the Ontario taxpayers, as we understand it, approximately \$15 million, advised that although the existing system in Ontario is not perfect, it was the best system available right now.

2. Because of Mr Peterson's promise to reduce insurance rates and premiums in Ontario, the Ontario motorist protection plan was devised. This plan was to reduce the number of lawsuits commenced as a result of automobile accidents. However, studies of similar systems have shown that initially there is an increase in litigation and therefore it is unlikely the premiums will decrease at all.

3. The government is removing the three per cent tax premium paid by automobile insurance companies. It is also cancelling the annual payment made to OHIP by the automobile insurance companies to cover the cost and treatment of accident victims. This amounts, we believe, to a subsidy to the insurance companies in excess of \$140 million. It is ultimately the employers and the taxpayers who will have to make up this amount while at the same time not obtaining any kind of reduction in premiums and receiving inferior coverage from the insurance companies.

1600

4. The legislation proposes a threshold level below which an insured may not sue. The legislation removes the right to receive compensation beyond the no-fault benefits except in the case of death, permanent serious disfigurement or permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature.

The terms used are sufficiently vague that it is not clear what will meet the threshold, and it is suggested that 90 to 95 per cent of all possible losses will be eliminated. This means that there will be no compensation at all if your disfigure-

ment is serious but not permanent. The combinations and permutations which would likely be below the threshold are so large that many people will lose their right to sue.

5. In addition, as a result of the threshold limit, the judge will be called on to decide if an individual has met the threshold test. Judges are not doctors and judges will be forced to look to the medical profession to make that decision for them. This will result in increased litigation for a number of years until there is sufficient guidance from the courts and medical malpractice insurance will likely increase as a result of the medical profession's increased participation in the process.

6. Because the injury must be physical in nature, it appears to take away any right of action to sue for strictly physiological injuries.

7. In regard to the actual no-fault benefits, the legislation proposes that \$450 per week will adequately compensate an injured individual.

First, as the current level of \$140 per week was set in the late 1970s and has not been increased since that time, the \$450 per week just barely meets the cost-of-living increases since the late 1970s.

Second, to become eligible for the \$450 per week no-fault benefit, the injured party must first exhaust all other recourses and sources of income available to them, such as sick leave credits, disability insurance and any other replacement income plans. We believe that the only ones to benefit here are the insurance companies. Any individual who returns to work after using up all these benefits as a result of injuries due to an automobile accident and is then forced to leave work again because of health problems unrelated to injuries sustained in the motor vehicle accident will have little or no income protection.

Third, the Workers' Compensation Board has recently approved increases in its benefits to approximately \$45,000 per year, which is almost twice the amount of benefits under the proposed legislation.

8. Although the proposed legislation increases medical rehabilitation and long-term care benefits from the current \$25,000 to \$500,000, any payments made will only be over and above what OHIP pays and experience has shown that the present limit of \$25,000 is seldom exceeded. Anyone eligible for benefits greater than \$25,000 will likely be eligible to sue, because the severity of his injuries will probably exceed the threshold. There is also a 10-year limit on this benefit. Arguably, the more serious injuries not serious enough to exceed the threshold limit might last

more than 10 years and the benefits payable will not.

We therefore wish to make the following recommendations:

1. Improve the definition of injuries which will be eligible to be pursued through the legal process. The definitions are presently too harsh and should include nonbodily injuries.

2. The compensation under the plan should not be tied or integrated to other benefit programs available to individuals eligible to receive benefits through private programs. If an integration of benefits is inevitable, there should be a premium reduction for those with additional superior protections.

3. Increase the no-fault benefits for wage replacement to more realistically compensate individuals injured in automobile accidents.

I thank you very much for your time and I am open for your questions.

The Chair: I have Mr Kormos, Mr Sterling, Mr Sola and Ms Oddie Munro. Up to three minutes, Mr Kormos.

Mr Kormos: I am not going to be that lengthy. The Ottawa-Carleton Board of Trade is one and the same as the chamber of commerce, I presume.

Mr Beaudry: That is correct, yes.

Mr Kormos: And you speak also for the Kingston District Chamber of Commerce?

Mr Beaudry: That is correct.

Mr Kormos: So you share their views.

Mr Beaudry: They are synonymous, yes.

Mr Kormos: I should tell you that the Ontario Chamber of Commerce has a position. They came to the committee and they endorsed this legislation. At the same time, that is in contrast with other lobby groups representing small business persons, but I guess part of the problem of the chamber of commerce is that it encompasses everything from small business people to—

Mr Beaudry: Very large.

Mr Kormos: With respect to small business people, it is a matter of perspective, but the impression one gets is that indeed it is the small entrepreneur, the business person who works himself or herself and employs two or three, or perhaps more. But perhaps one of the key elements that distinguished you in your submission, the Kingston chamber of commerce, other small business lobby groups and the Ontario Chamber of Commerce, which agrees with the legislation, is that it is the small entrepreneur

who finds this legislation unattractive and indeed, in some respects, dangerous.

Mr Beaudry: I have read the submission from the Ontario Chamber of Commerce. In the first part they are certainly supporting the government for recognizing that we have to do some changes, and I think this board as well appreciates that the government is finally addressing the concerns, that we have to do something. Nobody is saying that we have to leave things as they are. There are some problems.

Certainly the small business entrepreneurs such as me—I am a single individual; people rely on my expertise and I employ two or three individuals—if I am injured through a car accident, first of all, I do have some insurance to protect myself, but there is nothing to protect my business. I believe that right now I have the right to seek some redress through the courts. If I cannot do this, either I have to go out and get some very expensive insurance or I am going to go bankrupt. I believe that we, the small businessmen, are the backbone of the Ontario industry and that is why we are talking very loudly about this, because we are being threatened.

Mr Sterling: I would just like to thank you and your committee. You have been very active in dealing with provincial issues and I think it is healthy that the Ottawa-Carleton Board of Trade involves itself in the political process to the extent that you have.

I also congratulate you in taking a somewhat different position than the Ontario chamber, because my experience often is that the very large body is frightened to take a harder position. But in terms of the Ottawa-Carleton Board of Trade, from what I have heard from the business community here, save and except the insurance industry, you are properly reflecting their views.

Have you or your board done anything with regard to trying to find out what additional costs are going to be incurred by small business as a result of the implementation of Bill 68?

Mr Beaudry: One of the things we were looking at is—we talked to a lot of our private insurance carriers with regard to long-term disabilities, and with regard to long-term disability the private carriers, or the private brokers, are presently in a quandary of exactly what is going to happen to our present level of premiums, but they are all in agreement that we are going to have to go and find some very costly insurance to cover the cost of our loss of business.

I talked to one broker this morning who basically could not advise us. He could advise us

that it is going to cost a lot, but he could not quite advise us as to exactly the full impact yet because he is still reviewing that situation too.

We should not generalize the carriers. I think we are going to have to break them down into those carriers that carry car insurance and those that carry the long-term disability insurance. I think the long-term disability carriers are in quite a quandary right now to exactly advise us, the clients, as to the exact cost of it.

We feel that we are going to be facing increased costs in the employer health levy tax. We are not happy about it, but we feel that we are going to have to pick up the slack of that and that is going to cut into our profits as well and so on and so forth. We are looking at some serious costs which are going to jeopardize our wellbeing.

1610

Mr Sola: You state on page 2 that we are going to a no-fault plan, contrary to both the Slater and Osborne commissions. We had Mr Slater in here this morning, and I would like to quote to you from page 1 of his brief. It says:

“As you know, Bill 68 proposes amendments to auto insurance in Ontario which are much like my task force proposals, though much more carefully worked out, reflecting the intense consideration of motor vehicle accident compensation during the last three years.”

Second, you state that there is a loss of the right to sue, and again I would like to quote from Mr Slater in his brief this morning. He stated that, “The principal reason”—for using the right to sue—“was the deterioration since 1978 in the first-party no-fault benefits...the lack of efficient layers of optional insurance...and the inadequate levels of compensation for rehabilitation and care.”

He goes on to state, “These shortcomings had created a situation in which the majority of ordinary citizens were increasingly resorting to the tort litigation system to obtain reasonable compensation.” In other words, the increase in the no-fault benefits would reduce the necessity of going to court.

Also I think in his brief he stated that because of the necessity of resorting to litigation in the past, it has become almost a habit and that Bill 68 is actually going to reduce the use of the habit rather than reduce the right necessarily. We got into the habit of going to court because our no-fault benefits were inadequate, and therefore we resorted to this right to top up the inadequacy of the no-fault benefits.

I wonder if you could comment on that.

Mr Beaudry: I did not have a chance like you did to study Mr Slater's report this morning, but certainly there has been an increase in the number of lawsuits that could be directly related to the increasing number of accidents. There is a concept, though, in a free and democratic society that the individual has the right to pursue his or her feelings and to go out and get fully retributed or go through the legal system to get fully retributed and fully compensated for his or her loss.

We believe that in a democratic society, unlike eastern Europe—and thank God, they are coming around—that right has to be protected. Certainly we may have some rules and certainly we have a concern of trying to determine what is not important and what is petty, but I think it is important for a society like ours, a very progressive society, to make sure that we do not deny that right of natural justice to any of our members of the society.

I believe that we have enough jurisprudence now to hurry a lot of the cases through the courts. I think we should be concentrating more on trying to reduce the number of accidents by an improved road infrastructure rather than putting this type of legislation through.

The Chair: Thank you very much for your presentation.

We have from the County of Carleton Law Association Mr Cronyn, chairman of the practice and procedure committee. I believe the clerk has circulated copies of your presentation. You have 15 minutes. If you could leave us some time for some questions, comments and discussion, we would appreciate it. For the benefit of Hansard, identify yourself and then proceed.

COUNTY OF CARLETON LAW ASSOCIATION

Mr Cronyn: My name is Peter Cronyn. I have been practising law for the past 11 years here in the city of Ottawa. I am a trustee of the County of Carleton Law Association and I am currently the chairman of the practice and procedure committee.

The association is over 100 years old. We represent and have represented during that period of time the lawyers practising in the regional municipality of Ottawa-Carleton. The membership, at this stage, is around 1,200 and the vast majority of our members do not practise in the area of personal injury.

As you know, there are many lawyers who practise in the area of family, corporate-commercial, patents, etc. There are only a few of

our members who really stand to gain or lose one way or the other by virtue of this legislation. In fact, I think it is probably fair to say that the majority of our members would stand to gain more by reduced auto insurance premiums than any hope of revenue by virtue of keeping the system the way it is.

But the bottom line is that because the compensation system arising out of auto accidents is founded in a law of negligence in which we are all trained, it does give us the ability to understand what is being taken off the table by this legislation and what is being left on.

In return for the promise of premiums staying where they are or increasing 8 to 50 per cent only in the course of the next year—we do not know what is going to happen in the future—an awful lot is being taken off the table. We can see whether this is a fair deal, and the bottom line is that we just do not see it as being a good bargain.

Up until now the debate has somehow been characterized as being one between lawyers and the insurance industry, and I think that is an inappropriate way to characterize this struggle because what it is really between is the insurance industry and the public.

The public are the ones who are going to stand to take the loss here, and in fact the government has heard from a very well funded and very powerful lobby, the insurance group. The group that is being asked to make the most significant sacrifices by this legislation is a group which does not even know that it exists yet. They are the accident victims in the future. They have no voice, they have no money, they have no lobby. These are the individuals we would like to represent here today essentially. We are speaking for our future clients.

We tend to feel, as I have already said, that it is not a good deal and that the legislation should be scrapped, but the bottom line again is that we understand that is not a very strong likelihood. The thrust of our brief is really geared towards what we consider to be a bare minimum of how this should operate, and I ask you to turn to page 5 and deal first with the threshold.

The whole problem with a threshold is that by its very nature it is arbitrary. There are going to be some who fit within very clearly; there are going to be some who fall without, also very clearly. But there is going to be a significant grey area in between. The legislation has to try to reduce the size of that grey area as much as it possibly can. Instead, the proposed legislation, I would submit, increases the grey area, increases the uncertainty.

When Mr Justice Coulter Osborne was addressing our association last fall, he gave the opinion that this is just too wordy and, at the risk of taking a shot at my own profession, I think if you give too many words to lawyers, doctors and judges, you are only going to increase the likelihood of confusion. What has to be done is make this a clearer, more precise definition.

Similarly, it seems that it is the insurance industry that wants the threshold. I would say that the benefit of any doubt has to go to the innocent victim. The benefit of the doubt has to go to the person without the economic clout. As soon as you get close the threshold, you are at risk and a lot of the victims are going to say: "I cannot afford to take that risk. I cannot afford to pay for the risk of going all the way to the end of a case to find that I do not meet the threshold." Every effort has to be made to allow those individuals the opportunity to find out as soon as possible and with as much certainty as possible whether they fit the threshold.

As you can see on page 6 of the brief, there are several value judgements contained in the current definition. What is "serious" disfigurement or impairment? What if an injury is permanent and serious presently but may not be considered serious "permanently"? What is an "important" bodily function? When is it a "continuing" injury?

What we are submitting, and I think what the government has been trying to achieve, is that only those people with truly serious injuries should be able to maintain the right to pursue the remedies which exist now. Well then, why not use that word? Why not just say serious disfigurement, serious bodily injury? Why do we have to add the word "permanent"? If an injury is permanent, by its very nature it is serious. Why do you have to use the word "important" in regard to bodily function? The bottom line in this is that if you have lost a bodily function by virtue of an injury and it is minor, the economics are going to dictate that it not worth pursuing a claim. The courts can handle that. Take the word "important" out. Take the word "permanent" out.

1620

I should also add, and I am sure you have heard this many times, that the question of excluding emotional, psychological and mental injury is in this day and age just astounding. But I also would submit to you that it is contrary to the Charter of Rights and it will be embarrassing to this government to have this legislation go through

without somebody pointing that out. I think it will not survive in the courts.

Mr Kormos: They can try a "notwithstanding." It is a Liberal precedent.

Mr Cronyn: If they do so, it is at their own peril and embarrassment.

We would submit that the definition of the threshold should be amended to include death or serious disfigurement or serious impairment of a bodily function caused by an injury whether physical, emotional or mental in nature.

One of the most pernicious aspects of this legislation is the provision in regard to pre-trial motions, the provision which says that if the defence loses the motion it can still raise it at trial. Again I say, why are you giving the benefit of the doubt to the people with the economic clout? Why not do it the other way around? Why not give it to the individual who has been injured and does not have the economic force behind him or her to take this thing right to its conclusion?

But I also say to you that it would appear to be in everybody's best interest, the insurers and the victims, to have this matter determined as quickly as possible. There are no incentives with this current wording to have it determined early or quickly, because if you know that it is going to be raised at trial, why bother? The insurance industry is going to end up paying for an awful lot of trials which it would not ordinarily have to if it would just let the thing be determined early.

I submit that, one, the current clause which permits the defence lawyers to raise it at trial, whether they succeed or not on a motion, should be deleted, and two, the insurance industry should be required to pay for a motion to be brought at the earliest possible time to have the issue determined. Leave that to the courts as well. If a judge is persuaded on the medical evidence before him or her that it is inappropriate to determine the issue at that time, he or she has the power to say it has to be put over to trial. Why provide for it in the legislation?

I think you have heard a great deal about economic loss already and, once again, from Mr Justice Coulter Osborne when he was here. This is confirmed throughout all of your briefs, I am sure. Every other threshold system in the world still permits economic loss whether your injuries meet the threshold or not, and to arbitrarily take that right away from people is totally without merit. What he has said is that the whole theory behind threshold plans and the thrust of them is to make people whole economically. What they are being asked to give up is the right to pain and suffering but not the economic loss.

In spite of the fact that the weekly indemnities have been raised, that does not compensate for future loss of income and for lost opportunities now. For the gentleman who just spoke, it does not take into account, for the entrepreneur, the ongoing cost that that individual may have to carry just to keep the business afloat.

What about farmers and their mortgages? These types of benefits just are not going to keep those farms for them. You are going to have bankruptcies and farm sales because these people simply cannot afford to stay afloat. They have to be able to sue for their economic loss, their futures.

In terms of the weekly indemnity, you have heard probably many times as well that the \$450 when you take into account the inflationary aspects is really only a \$70 increase over what the current figures are. The \$140 if factored by inflation to the present time would be about \$370 a week. It is still inadequate and something has to be done in that regard.

I have included in the brief some interesting information and I think it would be of some assistance to the committee. There are some tables at the conclusion of the brief and I would ask you to turn to those. The reason I am asking you to do that is, as I understand the government's rationale for this legislation, the average citizen in Ontario should not be required to pay for any more insurance, should not have to undergo the rising costs of insurance.

The bottom line here is, the bare minimum is, if you are saying that about that citizen, then you have to indemnify that system with this plan; if you are saying the average citizen is going to have to go out and buy extra insurance to cover his loss of income, then it is not meeting its stated purpose.

Here is what is telling about this. At table I, if you look at the second level, high school education, in the province of Ontario a male—I should point out to you as well that these figures are a pretty clear indication that pay equity should come into play as well because the difference between when males earn and females earn is outrageous.

Mr Kormos: They have been dragging their heels on that, haven't they?

Mr Cronyn: But leaving that aside, a male in Toronto with a high school education earns the average of \$37,000 per annum and in the province of Ontario \$35,000 per annum.

What is telling in table III on the page following is that 80 per cent of the males in the province of Ontario have either a high school

education or more; 50 per cent have a high school education at a bare minimum, but above and beyond that they have a higher education. That would strike me as being your average citizen, an individual with a high school education at least at the bare minimum.

The weekly indemnities are not factored for regional disparities. I would therefore submit that the one you have to work from, because you always have the factor of 80 per cent of the existing income, has to be the highest in the province, and that is \$37,000 for a male with a high school education in Toronto. If you factor that with the 80 per cent, the weekly indemnity should be \$570. That would basically indemnify the average citizen in the province of Ontario. Then the government can, if it wishes, say to those who have an ability to generate a higher income that they can go and buy excess insurance, but that is a minimum.

Mr Philip: I am sure you all realize that you and lawyers are about as popular with the Liberals and with the Insurance Bureau of Canada as Mr Rushdie would be at a convention of the Iranian secret police. But I want to ask you this question.

Interjection.

Mr Kormos: Or Brad Nixon with intellect.

Mr Philip: Or Brad Nixon with intellect.

Mr J. B. Nixon: Oh, boy.

Mr Philip: The Insurance Bureau of Canada which acts as the ventriloquist for the Liberal Party and Mrs Munro used this figure of \$500 million a year in the current system that is being taken out by you leeches of lawyers who are bleeding this whole system.

Ms Oddie Munro: On a point of order, Mr Chairman: I never ever mentioned \$500 million.

Mr Philip: You did use \$500 million.

The Chair: Yes, but she did not use the other remark.

Mr Philip: We seem to have a difference of opinion. Mrs Munro says she did not use the \$500 million and the Chair says that he remembers her using it.

Ms Oddie Munro: Out of context. We have got a witness here.

Mr Kormos: Get a lawyer.

Ms Oddie Munro: I have got a lawyer.

Mr Philip: Would you believe that the Liberal government, when we finally got the research, which was ready before October, when it was finally tabled yesterday, did not have any research that would show exactly how much of

the premium is being bled off by the legal profession in this litigation or arbitration system? The Insurance Bureau of Canada has not produced any figures that show where \$500 million is coming from. Of course they have not said how much these ads are costing on the premiums either. Can you tell us?

This morning we were told by David Slater that when he wrote his original report, he thought that there would be a great increase in litigation, that we would go the American route. It has not gone that way. What percentage do you think? Have you challenged this figure of \$500 million, this lie which they cannot produce any facts or figures or research to show, either the Liberals or their boss, the Insurance Bureau of Canada?

Mr Cronyn: I can tell you that the members of our profession have been placed in a particularly uncomfortable position because we are on the defence throughout in this thing. For the most part, what we have been trying to do is simply educate the public as to the issues and yet, even the minister responsible, and I found it outrageous, was out here saying that we are out misinforming people.

Figures like those have been tossed around, unsupported and blithely. I do not know what the figures are—it is not something that is readily available—but I can tell you that 99 per cent of auto personal injury cases do not go to court. Probably of the cases that finally get into a lawyer's office, a good 90 per cent stay within the insurance adjusting process, long before they get into the hands of lawyers. I do not think that those figures are fair or accurate. I think it is unfair that our profession has taken it on the chin.

1630

The Chair: Mr Nixon, for a minute and a half. Thank you.

Mr Philip: You are not responsible for this mess any more than the doctors are responsible for the medicare mess in Ontario?

The Chair: Mr Nixon, a minute and a half. Mr Philip, control yourself.

Mr J. B. Nixon: Thank you very much for appearing before us. When you say that this has become in some senses a battle between lawyers and the insurance industry and that that is wrong, I agree with you. To the extent it has happened, it is unfortunate and it really obscures discussion of the real issues. But I want to assure you that we have had presentations from many people who represent victims here, especially future victims: Ontario March of Dimes, Advocacy Resource Centre for the Handicapped, doctors, psycholo-

gists and many victims, many of whom have said they approve of the broad scheme but have real concerns about the level of compensation and the threshold.

One of the principles behind the threshold and the use of the word "permanent" is that for those who do not have permanent injuries, the hope is that through extensive rehabilitation and long-term care—medical, whatever—they can be made whole again. For those whose injuries are permanent, rehabilitation can never make them whole and therefore the right to sue in the courts should be maintained. That is why the word "permanent" is in there.

I really would like to get your comments on that. I would also like to point out to you that the Fair Action in Insurance Reform committee, which you may not be associated with, has made a number of submissions to the ministry, both private and publicly, and has done a lot of actuarial work which was made available to this committee just yesterday. But they have had it and I think some of it has proved to be very useful. I just wanted to let you know that.

Mr Cronyn: Okay.

Mr J. B. Nixon: Could I get your response on the use of the word "permanent."

Mr Cronyn: I appreciate what is being said and what is being attempted to be achieved, but again I repeat that if an injury is permanent, by its very nature it is serious. I think the problem is that if you have a serious injury, it may well last for two, three, or four years and during that time there are significant losses that can occur to that individual, and those individuals are being culled out by this definition. As I understood it, when this legislation was first brought out, what the government was trying to achieve was taking out maybe the \$20,000 to \$25,000 or \$35,000 general damage-type claim. I think that what they have culled out are \$150,000 to \$175,000 claims. I think that lawyers have over the course of the last six months shown many examples of cases which would not meet the criteria.

Someone in the paper just recently, Barry Starr, had a case here in Ottawa that was decided just last week. It was a \$400,000 judgement and he did not think the case would have met the permanent and serious threshold, but it certainly would have met the serious threshold.

Mr J. B. Nixon: One very quick comment, if I may? Did you know that Tom Heintzman from the Canadian Bar Association came before us? I hate this dispute about how much lawyers make in this system, but Tom did say that 12 per cent of the premium revenues are allocated to personal

injury lawyers' fees. Those were his words, not mine, and that works out roughly to \$400 million.

Mr Cronyn: I do not know how much truth is in this statement—but I tend to believe, and I am going to support lawyers on this, that if you did not have the lawyers there, it would probably be more expensive.

Mr J. B. Nixon: You may well be right.

Mr Cronyn: How come you have to spend money to save money? I think you are going to be paying adjusters, you are going to be paying somebody to keep the costs down.

Mr J. B. Nixon: But where does it continue to be involved in the system? It is not—I agree with you.

Mr Sterling: I am a member of the Carleton county bar. I have not practised for 12 years since I have been involved in politics.

Mr McClelland: Are you paid up?

Mr Sterling: I do not know if I am paid up or not. I think I am.

Mr Cronyn: I think you are.

Mr Sterling: At any rate, I was really disturbed to hear that in November the Attorney General (Mr Scott) came down and the bar all went up to Mont Ste Marie, which is over on the Quebec side about 75 miles from here, and the Attorney General was not very diligent in his defence of this piece of legislation. I do not like it when we have a piece of legislation where lawyers are being told two different stories at two different ends. Did the Attorney General make any statement as to his nonsupport for this legislation there either publicly or privately that you are aware of? You may not want to answer that.

Mr Cronyn: Publicly he did not say anything to suggest that he was not behind this legislation. I cannot say what he said privately.

The Chair: Thank you very much for your presentation.

From the Carleton University Students' Association—is Mr Linton in the audience? No.

Okay, from the Bakery, Confectionery and Tobacco Workers International Union, Local 322, Mr Miron. Sir, we have 15 minutes. If you could save some time for some questions, comments and discussion, we would appreciate that.

Mr Miron: We certainly will.

The Chair: For the purposes of Hansard, please identify yourself and then proceed.

BAKERY, CONFECTIONERY AND TOBACCO WORKERS INTERNATIONAL UNION, LOCAL 322

Mr Miron: Good afternoon. I am Ray Miron, representing the employees of Local 322 of the Bakery, Confectionery and Tobacco Workers International Union. We would like to express our views on the proposed legislation.

We can see why the government of Ontario has been so quiet but yet in such a rush to pass this piece of legislation. I myself would be embarrassed to try to shove this piece of legislation called Bill 68 on to the good, hardworking people of Ontario.

The newspapers have told us that the reason the Ontario government has spent many of our tax dollars coming up with this trash legislation and hiring advisers whom it does not listen to is because it has to keep this election promise to keep insurance premiums down.

The whole reasoning behind this legislation has been lost in the rush. We are now told that rates are going to go up eight per cent to 50 per cent in exchange for less protection of us workers, our families and children.

People say that Ontario is the richest province in the country, yet the government is pushing the worst type of auto insurance there is on to the same people. What could possibly be going through the government's mind when innocent accident victims could stand the chance of losing their jobs, their ability to support a family, put meals on the table, pay mortgages, etc?

The government's offer is of accident benefits that cover all medical expenses and 80 per cent of our lost earnings up to a maximum of \$450 per week, but only after we have used up our own sick leave and disability plans. What about pain and suffering? What about psychological and mental suffering? Is there anything for that? If this does pass, our belief is that it will only make it harder for our group to keep our medical plans and disability benefits, let alone try to improve on them. The people of my local have worked too hard and have given up cash salary to obtain our sickness and disability coverage. Why should it be used to save the insurance companies money?

My belief is that this government must think that the people of Ontario are in hibernation. I have news for you. They are not. They are out there working to keep this province of Ontario going, but if this legislation is passed, they will want to stay off the streets, sidewalks and out of automobiles, for these areas will be an even greater risk for the type of compensation the government is offering to us with this Bill 68.

Mr Kormos: I want to tell you, Mr Miron, that we have had a few groups and individuals before the committee in Toronto—they only let us go to four different cities; we wanted to go to more—supporting the legislation. They were the auto insurance industry and they came out here in support. One actor has hit four different cities already. He was here today. This is the fourth time he has appeared in front of the committee, each time basically under a different label. That shows how difficult a time the government has had finding people to speak out in favour of the legislation.

At the same time, consumers' groups, lawyers—yes, lawyers—have come forward condemning the legislation, but doctors as well and groups fighting for the rights of disabled people, groups involved in rehabilitation, teachers, trade unionists of all stripes, police associations and workers. Firefighters were here today telling the government desperately that this is bad legislation and please do not pass it. The problem is that the auto insurance industry is a powerful and wealthy industry and every penny of that wealth is from the pockets of drivers, workers, like yourself and your brothers and sisters, who have been paying premiums, and probably premiums far too high, for a long time.

I can but say to you, thank you for coming. Go back to your co-workers and tell them how important it is. There are some cracks in the system. One Liberal member has already spoken out publicly, from the Windsor area, against the bill and has indicated that he is not prepared to support it. The Liberal riding organization in Sudbury has passed a resolution indicating that it does not want its member to support this bill. So tell your membership to lean on these people, especially the Liberal backbenchers. Tell them that not only is the bill bad and we know that it is designed to just make big profits for the auto insurance industry, is designed to hurt workers, but that people are going to remember that.

If this government plans on having an election in the fall of 1990, probably a good 20—it is such a big majority—of those members' seats are

precarious. This legislation is not going to help them. It is going to turn people against them like nothing else ever could, because this is paying off the insurance industry with money that is coming out of drivers' pockets, out of workers' pockets and on the broken backs and broken bones of victims. It treats drunk drivers better than it treats many victims. You can tell your membership that.

Mr Sterling: This is the end of a fairly long day and we have heard a lot of groups, a lot of people representing various locals in the area and we have not heard one local union speak in favour of this legislation. Taxi drivers—every union that has come in front of us has been opposed to this legislation. I think that is true of every venue we have been sitting in and hearing these matters. I would just like to thank you for holding to the last and I appreciate your giving us your views on this.

I guess what upsets me most in this whole thing is the shell game that goes on in terms of this legislation. The government is telling the public that they are going to get auto insurance premiums at a lower rate. They are doing that partially by forgiving the insurance industry some \$250 million that we know about. They are also taking some significant benefits away from people who are injured. I guess that is inherent dishonesty with what is really going on and I do not think the people will understand it until a relative is injured and they cannot collect. That is when, I think, it will hit home. Unfortunately, that may happen after the next election. I just hope that you will tell your members that there is a shell game going on and the fact of the matter is that there is not any saving in money. They are really receiving less in benefits.

The Chair: Thank you very much for your presentation. Is anyone here from the Carleton University Students' Association? If not, I am going to adjourn the hearings until tomorrow morning at 8:30 in Toronto.

The committee adjourned at 1641.

CONTENTS

Wednesday 7 February 1990

Insurance Statute Law Amendment Act, 1989	G-827
Canadian Union of Public Employees, Local 576	G-827
Canada Safety Council	G-831
Dr David W. Slater	G-836
Optimum Financial Corp	G-843
Public Service Alliance of Canada	G-853
Afternoon sitting	G-859
Medical-Legal Society of Ottawa-Carleton	G-859
Ottawa Insurance Brokers Association	G-865
Retail, Wholesale and Department Store Union	G-869
Eric Van Camp	G-873
Albert Roy	G-875
Ottawa Professional Fire Fighters Association	G-882
Ottawa-Carleton Board of Trade	G-885
County of Carleton Law Association	G-888
Bakery, Confectionery and Tobacco Workers International Union, Local 322	G-892
Adjournment	G-893

STANDING COMMITTEE ON GENERAL GOVERNMENT

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Philip, Ed (Etobicoke-Rexdale NDP) for Mr Charlton

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Also taking part:

Chiarelli, Robert (Ottawa West L)

McGuinty, Dalton J. (Ottawa South L)

Clerk: Carrozza, Franco**Staff:**

McNaught, Andrew, Research Officer, Legislative Research Service

Witnesses:**From the Ministry of Financial Institutions:**

Ferraro, Rick E., Parliamentary Assistant to the Minister of Financial Institutions (Guelph L)
Endicott, Eric, Manager, Policy Co-ordination
Burton, Gillian, Co-ordinator, Insurance Review Project

From the Canadian Union of Public Employees, Local 576:

Jenkins, Terry, President

From the Canada Safety Council:

Therien, Emile, President
Smith, Jack, General Manager, Programs
Marchand, Ray

Individual Presentation:

Slater, Dr David W., Chairman, Ontario Task Force on Insurance

From the Optimum Financial Corp:

Thibault, Alain, Senior Vice-President
Mercier, Paul, Senior Vice-President, Insurance

From the Public Service Alliance of Canada:

Bean, Daryl T., National President

From the Medical-Legal Society of Ottawa-Carleton:

Pipe, Dr Andrew

From the Ottawa Insurance Brokers Association:

Baizana, Jack, President
Taylor, Terry, Assistant General Manager, Insurance Brokers Association of Ontario

From the Retail, Wholesale and Department Store Union:

Ghadban, Harry
Alsadi, Mohamad

Individual Presentations:

Van Camp, Eric
Roy, Albert

From the Ottawa Professional Fire Fighters Association:

Stevens, Preston

From the Ottawa-Carleton Board of Trade:

Beaudry, Paul M., Chairman, Provincial Affairs

From the County of Carleton Law Association:

Cronyn, Peter J., Chairman, Practice and Procedure Committee

From the Bakery, Confectionery and Tobacco Workers International Union, Local 322:

Miron, Ray

TABLE DES MATIÈRES**Le mercredi 7 février 1990**

Loi de 1989 modifiant des lois concernant l'assurance	G-827
Régie de l'assurance automobile du Québec	G-848
L'Association des juristes d'expression française de l'Ontario	G-879

Témoins:**De la Régie de l'assurance automobile du Québec:**

Genest, Camille

Viel, André

De l'Association des juristes d'expression française de l'Ontario:

Guénette, Gilles

Lavigne, Pierre R.



CAZON
xc 16
-G23

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Legislative Assembly of Ontario

Standing Committee on General Government

Insurance Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Thursday 8 February 1990



Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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CONTENTS

Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 8 February 1990

The committee met at 0847 in room 151.

INSURANCE STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

The Chair: I am going to recognize a quorum and welcome back to the committee Mr Ferraro, parliamentary assistant to the Minister of Financial Institutions, and his delegation. Maybe you could introduce them for Hansard and for the benefit of the television audience, then open it up for questions until about 9:50 or 9:55, a little over an hour.

MINISTRY OF FINANCIAL INSTITUTIONS

Mr Ferraro: Thank you, Mr Chairman, and good morning to you and the members of the committee. Quickly I will reintroduce Robert Simpson, the Deputy Minister of Financial Institutions on my right, and on my extreme left Ms Colleen Parrish, who is the director of policy and planning in the Ministry of Financial Institutions. Our special guest star today, I guess, is Joe Cheng. Mr Cheng is a partner in the firm of Eckler Partners. He is a fellow of the society of actuaries. He is a veteran and widely respected property and casualty actuary in the province, if not indeed in the country. Mr Chairman, I will turn it over to you and to the committee.

The Chair: Does either Mr Philip or Mr Kormos have any questions?

Mr Kormos: I thought the minister was going to go through his documentation, particularly the Eckler material, for which surely we want some explanation. I am particularly interested, I guess, in what motivated the ministry to request particular things, what was requested of Eckler, what was provided and why the minister requested those particular things as, let's say, compared to other things. That should be a good start, Mr Chairman.

Mr Ferraro: I guess we can have the deputy minister address some of those questions, Mr Kormos.

Mr Simpson: In general response to that, Mr Kormos, we probably, in the course of the examination between what the Ontario Auto-

bile Insurance Board did in its Reference and what we did over a period of time in the various studies, examined all manner of questions about product and kinds of product and the implications of a change to this and a change to that. It was a thorough canvass of all the possibilities. I cannot think of anything much that was not canvassed one way or another, so when you ask why we picked one thing as opposed to another, I do not really understand the distinction.

Mr Kormos: Why were some things referred to the OAIB and other things undertaken internally?

Mr Simpson: I guess I would have to go back to the answer I gave on Tuesday that said, as you recall, that document I back in January 1989 was an actuarial study relating to what is called the choice proposal. We had that before us. The document somewhere in the first six documents was a report dealing with a number of varieties of other possible product reforms. So the things we had before us early in the process were the choice proposals.

We had information and early documentation on the threshold schemes in Michigan and New York among the options, and back at the time the reference was made to the automobile insurance board, those were the things at the beginning that were before us where we had some actuarial information. The decision was taken at that stage of the process to ask them to look at those two things.

Other potential options, and I think I mentioned this, including the FAIR deductible scheme, were brought to us in the course of the ensuing weeks and months. Those were the things that we looked at in the course of those investigations. It unfolded just the way I described on Tuesday.

Mr Kormos: Obviously the OAIB considered a number of de facto thresholds. When was—

Mr Simpson: They considered Michigan and—

Mr Kormos: That is correct. When was the Bill 68 threshold written?

Mr Simpson: This September?

Ms Parrish: When was it written?

Mr Simpson: Drafted?

Mr Kormos: Yes, created.

Mr Philip: When did you decide on it?

Ms Parrish: I am sorry, Mr Philip, I missed part of your question.

Mr Philip: When did you decide to choose that model or that level or whatever you want to call it?

Mr Kormos: When did the birth occur as compared to the mere conception?

Ms Parrish: I am not too sure whether decided is conception or decided is birth. When it was drafted was in the summer; in August, to my recollection.

Mr Kormos: That is what is interesting. Was the threshold drafted in response to any of the 39 studies that are contained in this material, and which of those 39 studies considered the threshold that ultimately was drafted?

Ms Parrish: The studies that dealt with the hybrid threshold studies dealt with the more stringent or more strict threshold. I am just looking it up in the index. I believe it was dealt with in documents 24 and 25.

There are a number of documents that dealt with the effect of increasing certain elements of the threshold or moving, I guess, to the interpretation of the Michigan threshold. The current threshold in Bill 68 is essentially an attempt to articulate how the courts had interpreted the Michigan threshold at various times. In the technical presentation that was done in December, we pointed out to the committee that the Bill 68 threshold was an articulation of the report's position on the Michigan threshold. That threshold began to be developed in relation to the product which is referenced in these documents as "hybrid threshold." That is a combination of the pure no-fault and threshold systems. At various times attempts were made to define that and work on it and evolve it over time.

Mr Kormos: You say the threshold was drafted in August. The bulk of the material here was prepared before the end of July, so I trust then that the threshold was merely a response to the profit interests of the insurers.

Ms Parrish: I do not think that is a question I can ask from a technical viewpoint. The documents do show a discussion of a threshold very similar to the threshold that you have before you at various stages in documents that refer to the threshold no-fault system. From a legal perspective, we tried to draft various parts of the bill over the summer months, over the spring months, but if you look at these earlier documents you will see references to the threshold.

Interjection.

Mr Kormos: I am sorry. Go ahead, Mr Ferraro.

The Chair: Mr Ferraro and then I have Mr Runciman and Mr Philip.

Mr Kormos: Have I used up my time?

The Chair: No, no. I am just telling you so that—

Mr Ferraro: Just briefly, this determination of this model was developed by the government in response to how we can deal with the credibility problem in the insurance industry. It was not predominantly or even significantly concerned so much with the profits of the insurance company, much to the chagrin, I am sure, of Mr Kormos.

Mr Kormos: It is interesting that you would say that. What was the response of the insurance industry to the government's negation of the 13 February 1989 announcement by the OAIB?

Mr Ferraro: Could you be a little more specific and tell me what it was?

Mr Kormos: The 13 February 1989 announcement was the new ratings for premiums announced as a result of that first round of inquiries by the OAIB that resulted in premium increases of 17 per cent to 82 per cent.

Mr Ferraro: I am not sure, quite frankly. Maybe the deputy can help me there as to what the insurance industry's response was to the OAIB announcement.

Mr Kormos: Perhaps I should be clearer—

Mr Ferraro: Maybe you should be asking the insurance industry.

Mr Kormos: Well, you will recall that the minister accepted that report and was prepared to live with it, and it was only after there was significant pressure applied in the community, that is to say, communities across Ontario, that the minister finally backed off and agreed that increases of 17 per cent to 82 per cent were impossible to tolerate, at the very least politically. The insurance industry appeared to be very pleased with the results of that first round of hearings and with those premium increases.

I am asking you what the response of the insurance industry was to the ministry when the insurance industry was advised by the ministry that those new rate schedules were going to be abandoned.

Mr Ferraro: I personally cannot speak for the insurance industry. I can say with a fair degree of certainty that you are right that the minister accepts many reports. To suggest that he was

taking that as his direction, quite frankly, I think is wrong.

Certainly, when I saw the rate filings personally, from my standpoint, the concern was expressed by myself and indeed by other members of our caucus that our constituents and the drivers of Ontario could not live with those significant increases, quite frankly. There were discussions and, I think for obvious reasons, the government made the move it did.

Mr Kormos: In September 1987 when the Premier (Mr Peterson) said that he had a specific plan to reduce auto insurance premiums, was it the threshold plan that he had in mind?

Mr Ferraro: I do not know. Maybe you had better ask the Premier.

Mr Kormos: Wait a minute. Surely, the Premier's plan is going to be instituted through the Ministry of Financial Institutions.

Mr Ferraro: I would hope so.

Mr Kormos: Then I ask you, at what point in time did the Premier tell you what his specific plan was?

Mr Ferraro: I do not think he ever had a specific plan per se, save and except that he had an understanding as to how we were going to deal with the problem. In that regard he was specific.

Mr Kormos: What was the understanding?

Mr Ferraro: I would say this to you, Mr Kormos, you can argue that if the government, and indeed the Premier is the head of our government, had not instructed us to do what we did, that the 6.2 million drivers in Ontario would have experienced substantively higher increases from 1987 to the present than indeed they got. So in that regard they did receive lower premiums.

Mr Kormos: My understanding of what you just said is that the Premier, to the best of your knowledge, did not have a specific plan when he made that announcement in September.

Mr Ferraro: He may have. I was not aware of one.

Mr Kormos: Did he ever advise the ministry of a specific plan?

Mr Ferraro: I cannot answer that.

Mr Kormos: Why not?

Mr Ferraro: Because I am not aware of it. Maybe the deputy minister would be aware of this.

Mr Kormos: Yeah, that is why there is a whole gang of you up there. Let's canvass here and see which of you were advised of the specifics.

Mr Ferraro: There was certainly, without hesitation, a tremendous amount of discussion not only in caucus but in cabinet, as I understand. Indeed the ministry has been up to its ears, quite frankly, in dealing with the insurance problem over the last two and a half years. The degree of specificity that you require, I suggest to you, was not initially there but certainly the intent was there, and that was to get a plan. After much amount of time and much amount of effort, we have come up with this threshold no-fault that obviously is not acceptable by all.

0900

Mr Kormos: When was the threshold approach first embarked on?

Mr Ferraro: I can only speak for myself, but since I was there in October 1989, which is the first time I was in this particular ministry just about on a daily basis, we talked about thresholds, and different forms of insurance options were constantly debated. It was more than I care to remember.

Mr Kormos: Was there ever any discussion prior to October 1989 of a threshold system?

Mr Ferraro: I am sorry. Did I say 1989? I meant to say 1988. Forgive me.

Mr Kormos: Was there discussion prior to October 1988 on the threshold system?

Mr Ferraro: I am sure there was. I am sure that in the discussions of insurance and which direction the government should take, the ministry looked at every possible alternative.

Mr Kormos: Was the threshold system in mind when the OAIB embarked on the hearings that resulted in the first four reports?

Mr Ferraro: I cannot answer that specifically. Maybe the deputy can help me out.

Mr Simpson: I do not know the answer to that either, Mr Kormos, but I can tell you I was appointed deputy in September 1988. At the time, I guess, the processes at the auto board were starting. I am aware from asking, looking at files and becoming acquainted with the ministry that product reform and ideas about product reform, simply because of reform efforts in the United States and elsewhere, and problems in various insurance schemes across the country with increasing rates were topics of review, getting articles, representations from people at the time I came and before.

From the day I arrived, while the auto board was looking at rates and classifications and so on, their processes, I was aware of product reform ideas. I think the O'Connell-Joost sort of thing

from the United States, which was the choice system, was something I learned about virtually from the day I arrived. This was something that had been talked about because it had come from the United States. Representations were being made that this was a great idea, and as a deputy you walk in and you say, "What's going on in this particular area?" I cannot be any more specific than that.

Mr Kormos: My final question is, given that the OAIB was asked to consider three options, why was this fourth option not put to the OAIB for consideration in public hearing, the one we are dealing with now?

Mr Simpson: This option evolved out of both the OAIB hearings and the examination of all the other ideas and alternatives that were brought to us along the way.

Mr Kormos: How can that be when 38 of 39 of these documents pre-exist the report of the OAIB in July 1989? The bulk of them predate the 2 March order in council establishing the terms of reference.

Mr Simpson: Mr Kormos, I said on Tuesday and I will say it again, I did not say and have not said that we waited for the end of the OAIB hearings—and I said it on Tuesday—to examine and continue to examine other possibilities. People were bringing other possibilities to us—

Mr Kormos: Through the insurance industry.

Mr Simpson: No. FAIR is a prime example.

Mr Kormos: FAIR did not bring this threshold to you. Cut it out.

Mr Simpson: No, no. FAIR brought to us its version of a deductible scheme. My point is that ideas were being brought to us, suggested to us, not by the insurance industry at the time the reference hearings were going on.

Mr Kormos: Oh, yes, consumer groups wrote this threshold. That is big. Go ahead.

Mr Simpson: Consumer groups were in fact coming to us with their representations as well.

Mr Kormos: Not with this kind of threshold.

Mr Simpson: The same ones as they made to this committee. It is a live process.

The Chair: Mr Philip, up to seven minutes.

Mr Philip: I am going to get into very great detail—I am told that I only have seven minutes—on the threshold matter and some of the interesting comments on the threshold by the Advocacy Resource Centre for the Handicapped, but I want to step back and deal with some more general issues.

The Premier promised zero increase in insurance premiums and then there was an election, or he promised it during the election. I want to ask you, at what stage or at what time or what research can you point to in which a decision was decided to remove the premium tax which gives a \$95-million subsidy to the insurance industry? What research and what documents can you point to that suggest it was a good idea to end the OHIP subsidy, which is a \$48-million tax subsidy to the insurance industry, and what decision and research points to the decision of making the Ontario motorist protection plan payments secondary to almost all other benefits?

Where is the research in here that you can point to that told it was a good idea then to take millions and millions of the tax dollars and give them to the insurance companies? Where is the research that we can find in here that you have tabled?

Mr Ferraro: Let me respond this way, if I can. Again, in our view, the action that was taken under the leadership of the Premier—

Mr Kormos: What leadership?

Mr Ferraro: —has resulted in lower premiums than the consumers in Ontario would have had if we had done nothing, quite frankly. If you are asking for a specific piece of paper that would deal with the subrogation problem or issue, if you will, of OHIP or the reduction of the three per cent premium tax, I do not expect there is research.

However, let me just conclude by saying you indicate and have indicated, and it is perfectly within your right to indicate, that we are subsidizing the insurance industry. There is a requirement in the bill that says the commissioner must see specific filings from insurance companies prior to approval of rates that show where that reduction—and admittedly amounting to approximately \$143 million of taxpayers' money, if you will—is going to go directly to the taxpayers in the form of lower premiums.

Mr Philip: Those are the documents you are refusing to give the committee.

Mr Kormos: Let's see it, come on.

Mr Philip: If that is the case, then table the documents.

Mr Ferraro: If the consumers want the insurance companies to pay that, then the consumers are going to have to pay an additional \$143 million in premiums.

Mr Philip: Well, we will pay then.

Mr Kormos: We are paying it anyway.

Mr Philip: We have a bunch of documents which he says he has; none of them are here. He

has not tabled them. He will not table them. He will not give them to the public. He will probably keep them until after—

Mr Ferraro: Who says he has? Who said he has documents?

Mr Kormos: You said.

Mr Philip: You said.

Mr Ferraro: I said you have every bit of documentation to my knowledge; in fact, more than you requested.

Mr Philip: You have rate filings. Do not play word games with me. You know what I mean.

Mr Ferraro: You request 27 or 23. We gave you 39. The only thing that you do not have, to my knowledge, is the cabinet submission, and I suggest to you that would be somewhat untoward.

Mr Philip: You have rate filings. You know what those rate filings are. You could have come clean and tabled them with the public. You have decided to hold on to them until after the October election because—

Mr Ferraro: That is not correct.

Mr Philip: —you know that if the public really knew what kind of increases they are going to get, then they would throw you out of office during that election and that is why you are hiding them until after the election.

Mr Kormos: He has them. You admitted that.

The Chair: I have Mr Nixon on a point of information.

Mr Philip: If it cuts into my seven minutes, I hope you are counting.

The Chair: It will not.

Mr J. B. Nixon: I would not want to take any time away from you. All I wanted to say was that the Osborne report clearly recommends that auto insurance benefits should be paid secondarily to any other benefits from social programs, unemployment insurance or whatever, which may exist. If you are looking for some sort of argument being made, that is where it is. Osborne says that auto benefits should be secondary to other benefits. It is basically in his discussion of a collateral source rule.

Mr Philip: It would be interesting then, if you are going to follow Osborne then, why do you not follow Osborne. You have not done that in this bill.

Mr J. B. Nixon: I am just supplying you with information. I am not telling you whom I follow. I am just here as a member of the committee.

Mr Philip: I am just asking for the research. You are refusing to table any research you have or any filings.

Mr J. B. Nixon: If you do not want any information, I am sorry, but the information is there in Osborne and you should read Osborne.

Mr Kormos: You have him by the nose, the whole insurance industry.

Mr Philip: Okay, so there is no research then that shows why you would give away \$143 million of the tax money to the insurance companies.

0910

I want to ask you the other question. The major rationale that we have for this change, if you want, for fixing the wheel, whatever you want to call it—and the Attorney General (Mr Scott) has been very specific. He has called the Conservatives and New Democrats as being the spokespersons for the legal profession in this province.

The major argument by the Attorney General and by the government is that we are going to save an awful lot by cutting out all this litigation and legal fees. Indeed, in every city we go into then, coincidentally in the newspapers that same day, the Insurance Bureau of Canada says that it is costing us \$500 million a year under the current system because of these terrible lawyers who are bleeding the system. One of the Liberal members yesterday used that figure, so obviously that is the research she was relying on.

I ask you, if the major reason, which interestingly enough is disputed by everyone whom we have heard so far, including David Slater, who said that his earlier projections on legal costs and on settlements did not exactly come into fruition, that we did not follow the American pattern—if it is costing \$500 million a year because of the legal system, show us the research. Where is that \$500 million? Where is the research that says we have a major problem here because of the litigation system and therefore we have to bring in new legislation to deal with it? Show us where that research is here.

Mr Ferraro: Let me respond by saying I do not think anyone has ever heard me say or, quite frankly, even the minister say that the major cost is the cost of litigation. We have taken the approach that the system, the way we buy and sell insurance and the way we do business, if you will, in insurance, and that is taking into account the judicial aspect as well, is in dire need of overhaul.

Osborne himself, while I acknowledge did not recommend that we touch the tort system to deal

with that specifically, in hearings before the Ontario Automobile Insurance Board indicated that indeed if costs continued to escalate, and I think it is safe to say that they have—bodily injury claims last year were \$1.8 billion—then indeed something would have to give. When asked to expound on that a little further, and this is documented, he indicated that third-party costs had to be dealt with, essentially costs of bodily injury claims.

We have done that. But to suggest that that was the whole area of savings, if you will, is totally erroneous. We have taken a comprehensive approach to the problem. Indeed, we think it is going to work.

Mr Philip: I can save money on any premium if I do not pay the person who is insured.

Mr Ferraro: I am sorry?

Mr Philip: I can save money on any premium, I can offer you any amount of insurance, if I do not pay out any benefits. That is a very simple way then of cutting down premiums.

Mr Ferraro: And we can offer any insurance policy you want, if you want to pay for it. If you think consumers want to pay a 35 per cent increase, I respect that.

Mr Philip: I am sure you have to admit the major principal of this legislation is the removal of the tort system.

Mr Ferraro: No, I will not admit that. I will say it is a significant part, that some access to tort is prudent.

Mr Philip: All right. If it is a significant part of it, where is the costing of the tort system that would allow you the justification for removing that? If you are taking it out, then where is the figure? Where is the research that shows what it actually costs in the first place? The fact is that you do not have any. Instead, you allow your ventriloquist, the Insurance Bureau of Canada, to go around lying to the public by saying that it is costing \$500 million. That is what you are doing.

Mr Ferraro: No, that is not true. The OAIB canvassed legal costs, quite frankly, and I think there was a study done by Miller, and I stand to be corrected but I think I am right, an actuary by the name of Miller—perhaps Mr Cheng can help me—indicated I think to the IBC that the cost for litigation was \$400 million. I understand that it was done well over a year ago, so the figure, whoever used it initially, of \$500 million was the \$400-million figure that was given by the actuary to the OAIB, plus an inflationary factor, which would amount to \$500 million.

Mr Kormos: Legal and adjustment costs.

Mr Ferraro: That is my understanding where that figure came from.

The Chair: Mr Runciman for up to 20 minutes.

Mr Runciman: Some of the line of questioning Mr Kormos is pursuing is something that all of us in the opposition are interested in, I think, in terms of how we arrived at where we are today, but I do not think we are going to get answers. We have a parliamentary assistant who was not around during that period of time and a deputy minister—and I am not sure Ms Parrish was aware of all of the goings-on back in the fall of 1987 and the spring of 1988. I would certainly like at some point for a legislative committee to really be able to dig into this and find out exactly what occurred and why it occurred.

Mr Kormos: But those tapes were erased a long time ago.

Mr Ferraro: I was around.

Mr Kormos: Another 18 minutes of erased tapes.

Mr Runciman: That is right, and to know exactly what occurred. It is regrettable. Perhaps at an earlier stage in these proceedings we should have at least proposed that the Premier appear before us to give his version of the events as they evolved in late 1987 and early 1988, but that is a little late in the day in this committee's hearings.

I would just like to ask a few specifics about the information given to us. I was wondering, is there any material in all of this documentation that costs the implications of Bill 68 or comparable threshold plans that you have looked at for other government agencies, for example, workers' compensation, legal aid and welfare?

Mr Ferraro: I do not think so, but perhaps I will let Ms Parrish respond.

Ms Parrish: There are a number of costings of the collateral source rule, which is one of the tort reforms. Because auto insurance is a secondary payer, it pays before welfare. It is very clear in all the drafting, for example, that you cannot make people take the guaranteed annual income system for the disabled, so it is a secondary payment and therefore the impact on programs like Gains-D or whatever does not exist. The documents do look at the general effect of collateral source payments but do not specifically single out collateral sources such as the workers' compensation bill.

Mr Runciman: We have been told that is a significant amount of money; at least, the comments from the board indicate that it is a

significant amount of money. Legal aid, I gather, is in the same boat. There has been no effort to try and look at what the implications might be there. So obviously, as well, there have been no provisions made as to how these additional costs are going to be covered that you are aware of. I am talking about the ones that we do know about in a general way in any event.

The fact that you have not done specific studies on the implications is what concerns me. So obviously you do not have any plans in respect to how you are going to deal with those additional costs. It is the same sort of thing in respect to our initial meeting when I questioned the deputy about the costs in terms of the bureaucracy, the additional bodies, etc, and what kind of plan he had in that respect, and he indicated he did not have one.

Mr Ferraro: Might I respond briefly to just a point?

The Chair: And I think the deputy minister may wish to respond.

Mr Ferraro: I was just going to say that it is anticipated, notwithstanding the points Mr Runciman is making, that there will be some saving, hopefully significant, vis-à-vis the welfare payments as well because of the fact that now the retired, the unemployed and students—particularly the unemployed—will get \$185. So hopefully that will reduce the welfare costs. I do not think there is a specific study there either.

Mr Runciman: You are using “hopefully” and “it is anticipated.” You have not done any specific studies on these implications. That is the point I am making.

Ms Parrish: In actual fact, on the issue of the number of persons who are in auto accidents and are forced on to public assistance, that study was done in the Osborne report. They have the sort of pie charts that show the percentage of people who currently are forced on to programs such as Gains-D as a result of a disability and an inability to recover from the tort system. Those persons will benefit from that program and there is information in the Osborne report about the number of persons in that situation.

The Chair: The deputy minister.

Mr Simpson: I reacted simply because my mind was quickly trying to go back to the exact exchange Mr Runciman and I had in that regard, and I think perhaps it was not quite of the nature that maybe he recalls. I think the nature of the discussion was more like when certain things were going to happen and at what stage they were

going to happen rather than that we did not have any idea or any plan.

0920

Mr Runciman: I guess we agree to disagree on that one. My view was that in terms of dollars and bodies, etc, you really did not have a handle on it, which surprised me since the government had planned to have this legislation through by the end of December and up and running by 1 March.

There have been some comments, Mr Cheng, about the threshold and the number of people, innocent victims, who might pierce the threshold. I heard this morning from one individual that the threshold could exclude 98 per cent, and perhaps your own figures indicate that. I gather you disagree with that and you are still sticking with the 90 per cent, but apparently there are actuarial documents in the material provided which conclude that 95 per cent to 96 per cent of claims would not make it. I am just wondering if you might want to elaborate on the government's position that it is a 90 per cent figure.

Mr Cheng: Based on my interpretation of the threshold and our analysis of the claimant database in the Osborne study, I came to the conclusion—this is my opinion only—that about five per cent would pass the threshold.

Mr Runciman: We have other opinions that are starting to come forward. Mr Chairman, a little later on I would like to make a formal request for 15 minutes for Professor Jack Carr, between 9:45 and 10 o'clock, to give his views, if that is possible, so that the committee can have the views of a respected economist who may have a different point of view and some significant concerns about the documentation that has been provided.

In document 31, Ms Parrish, there are some references to exhibits 1 and 2. They are not anywhere to be found. I am just wondering where those exhibits are. There is some suggestion that they might refer to the threshold calculations in terms of percentage of people not being afforded the opportunity of access to the court system.

Ms Parrish: If we have omitted anything in the course of collating or Xeroxing, I will certainly undertake to go back and look for it.

Mr Runciman: We would appreciate having that information, because there is some indication in the covering letter—

Ms Parrish: Yes. If there is something missing, there was certainly no intention. We will look for it. I will look at document 31 and if there is anything missing, I will endeavour to

find it. It is possible that the appendices got separated during copying or whatever.

Mr Runciman: Mr Cheng, with respect to incorporating, I see there is some speculation, some comment, in there about increasing long-term care benefits from \$1,500 in Bill 68 to \$3,000. What would the cost be to do that, as you calculate it?

Mr Cheng: I think it probably will increase the cost slightly from a present-value standpoint. If a person is going to exhaust the \$500,000 anyway, it would take half as much time to use up the \$500,000. So taking the time value of money into account, it should cost more, but the way the rates are set, the time value of money is ignored, so it would probably have a very small effect in terms of setting rates. I recall we have done something like that, but I do not know the exact effect.

Mr Runciman: But if we are talking an average, as the minister has been, from zero to eight per cent, we are talking a percentage of one per cent, a very modest figure in terms of the overall picture.

Mr Cheng: The percentage would not be on the eight per cent; it would be on the original premium, the current premium. Right off the bat, I do not know the answer, but I can go back and find it.

Mr Runciman: But the basic answer that you are giving me is that it would have a very modest impact.

Mr Cheng: I would think so.

Mr Runciman: Yes, that was my conclusion as well. What about the inclusion of psychological injury? What kind of impact would that have? I think you said \$35 a car.

Mr Cheng: You mean—

Mr Runciman: If you were including that as—

Mr Cheng: Passing the threshold.

Mr Runciman: Yes, right.

Mr Cheng: I have to examine the claimant database before I can respond to your question. I think there are quite a few claimants in that category. However, there are various degrees of psychological impairment, so to speak.

Mr Runciman: Are you saying you did not do a calculation—

Mr Cheng: No.

Mr Runciman: —with respect to what it would mean if psychological injury pierced the threshold? I thought—

Ms Parrish: It was done by the firm of Tillinghast.

Mr Runciman: So the Tillinghast figure is \$35 a car.

Ms Parrish: Yes. In document 39, which was done by Dave Oakden and Claudette Cantin.

Mr Runciman: I guess Mr Cheng cannot comment with respect to the implications, if indeed the government members and others want to incorporate psychological injury, of what the impact will be. I am trying to put this down in simple figures. I am still trying to apply this to the percentage increases the government is talking about and the kind of impact it might have in that respect.

Mr Ferraro: If I may interject, it is my understanding, and maybe Ms Parrish can correct me, that there is a study in there that indicates that if we wanted to include the psychological, it would be an increase of approximately 6.6 per cent on the premium. Is that right?

Ms Parrish: The 6.5 is what the Tillinghast report says in document 39, and says that it would be seven per cent for commercial vehicles. That is in document 39.

Mr Runciman: So that is on top of the zero to eight per cent.

Mr Ferraro: Yes.

Ms Parrish: Yes, that is what they said.

The Chair: If we are going to entertain Mr Carr from 9:45 to 10—Mr Nixon had wanted to ask some questions. I will give you another five minutes and then allow 15 minutes for Mr Nixon and then we could probably hear from Mr Carr. Do we need a motion to do that?

Mr J. B. Nixon: It was not that. My concern is that Mr Philip comes in and takes his 20 minutes, waltzes out, and because Mr Runciman wants Dr Carr, my 20 is cut to 15.

The Chair: Not unless you, Mr Runciman, are prepared in the next minute or so to wrap it up and that would still give Mr Nixon—

Mr Runciman: I am prepared to give up the remainder of my time, Mr Chairman, to ensure Dr Carr has an opportunity to present to us.

The Chair: Mr Nixon for up to 20 minutes then.

Mr J. B. Nixon: I am not sure whom to direct my questions to because they follow a difficult path, but I want to deal first of all with the elimination of the premium tax and the OHIP subrogation. Whoever is in the best position to point me to the statutory provisions, if there are

statutory provisions requiring the elimination of premium tax and the OHIP subrogation, can you point me to them? Where is it in the bill? Is it section 83?

Ms Parrish: The OHIP subrogation provision appears on page 52. It is section 85, revising section 36 of the Health Insurance Act.

Mr J. B. Nixon: Okay, and the premium tax—

Ms Parrish: Appears on page 51, section 83, revising section 66 of the Corporations Tax Act.

Mr J. B. Nixon: I do not have the draft regulations in front of me that describe the filings that have to be made by the insurance companies to obtain rate approval. My understanding is that there is a requirement they demonstrate in those filings that the elimination of the premium tax and the OHIP subrogation has an impact on the premiums paid by the consumers. In other words, the premiums are correspondingly reduced. Is that correct?

Ms Parrish: They have to indicate that information to the insurance commission so that the insurance commission staff, or currently the OAIB staff, can ensure the costs are passed through.

Mr J. B. Nixon: Is that in the regulations? Is that a requirement in the regulations?

Ms Parrish: The request for the information is in the regulation that was filed under Bill 10.

Mr J. B. Nixon: Perhaps at some point you could provide to me a copy of that regulation. It would save my going to the library.

Ms Parrish: Certainly.

0930

Mr J. B. Nixon: What power does the commissioner have if an insurance company fails to demonstrate that the full effect of the elimination of premium tax and the OHIP subrogation is not allowed for in premium reductions?

Ms Parrish: On the information, the power under the bill is to refuse to approve the rates. If the company's rate increases are not approved, it cannot charge anything more. If the insurance commissioner is not satisfied with the rates or the classifications filed by the insurance company, he can order a hearing. In the meantime, the company cannot get any increase. So there is considerable pressure on the companies to be careful with their filings and to listen to the insurance commissioner and his staff in their review.

Mr J. B. Nixon: We have heard much discussion—maybe Mr Ferraro or Mr Simpson

will want to deal with this one—and I am continuously hearing that this is a gift, an under-the-table subsidy and so on and so forth, to the insurance companies. What you have outlined for me is a statutory provision that mandates that the elimination of the premium tax and the elimination of the OHIP subrogation will have to be flowed through to the consumers in the form of reduced premiums. If they are not, insurance companies will not be allowed any rate increases and perhaps may not be allowed to operate in the market. Is that what you are telling me? Is that what I am being told?

Mr Ferraro: Those are exactly the facts, Mr Nixon. If they do not pass that directly on, as indicated in the legislation they will not be able to be in the auto insurance business in Ontario, quite frankly. It is a direct reduction to the consumer vis-à-vis his premium. It is no windfall to anyone save and except the consumer, if you want to classify it as a windfall.

Mr J. B. Nixon: I appreciate that because there has been a lot of confusion around this issue and I think people should be wary of misrepresenting the situation as a windfall in future, having heard the statutory provisions which require the pass-through of the benefit to the consumer.

Mr Cheng, did any of your reports deal with that issue? Did you examine what the average premium reduction would be as a result of the elimination of the premium tax and OHIP subrogation?

Mr Cheng: I have estimated the aggregate premium reduction, which is about three per cent, and the OHIP subsidy is about \$47 million or \$48 million.

Mr J. B. Nixon: How much would that translate to as average per premium? I guess you would divide it by six million.

Mr Cheng: I do not recall it right now.

Ms Parrish: I think it is slightly less than five per cent.

Mr J. B. Nixon: Slightly less than five per cent.

Ms Parrish: Somewhere around 4.6 per cent or something like that.

Mr J. B. Nixon: So there is a close to five per cent premium reduction as a result of the elimination of the premium tax and OHIP subrogation. Is it fair to say that?

Mr Ferraro: That is right.

Mr J. B. Nixon: When you did your reports, Mr Cheng, did you operate with that assumption in your mind?

Mr Cheng: No. Only at the very end was there a question asked of me, what would be the effect? There was no separate report done. It was just in the form of a letter responding to that question.

Mr J. B. Nixon: Can you refer me to that, as to which item of the documents it is? I am sorry. There are 39 and it is difficult for me to memorize all of them, never mind what is in all of the individual documents.

Mr Kormos: On a point of information, Mr Chairman: I use tradition, as Mr Nixon often does, to help clarify matters. Above and beyond the premium issue and the subsidization by OHIP, Mr Cheng determined that there was a saving of \$161 per car net reduction in compensation paid out. That is in addition to other subsidies. That is where the victim is subsidizing the insurer.

Mr Ferraro: I do not want to dispute those figures because I am not sure where you get them, but in fairness you would then have to calculate the increase in benefits on the other side, I think.

Mr Kormos: No, net reduction.

The Chair: I am going to stop there. Mr Nixon, please continue.

Mr J. B. Nixon: Could I get a copy? Could you refer me to which document that is?

Ms Parrish: I think it is either document 22 or document 24, and it may also appear in document 36.

Mr J. B. Nixon: Mr Cheng, what were your assumptions about rate inadequacy in the system?

Mr Cheng: There was a conference of four actuaries to assess the current premium inadequacy in two meetings, and we came to the conclusion that if we leave the current policy intact with no change whatsoever, the premium required to achieve the 12.5 per cent return on equity would range from 29 to 36 per cent, something in that range. Obviously, some have different assumptions about the continued escalation of bodily injury claims. The estimates vary, but that is the range; it is in the ballpark of a 30 per cent premium increase that is needed.

Mr J. B. Nixon: Did you have an opportunity to review any of the studies prepared by, I think it is, Actrex for the Fair Action in Insurance Reform organization?

Mr Cheng: I think I have reviewed one of them.

Mr J. B. Nixon: Is it your understanding that they assumed a similar rate inadequacy in the system?

Mr Cheng: I do not recall they assumed any rate inadequacy at all in the study.

Mr J. B. Nixon: Would it be fair to say that any FAIR proposal was proceeding on the assumption that rates in the existing market were adequate?

Mr Cheng: I believe so, yes.

Mr J. B. Nixon: You looked at a number of adjustments, I believe, to the compensation levels proposed in Bill 68, either part of Bill 68 being drafted or during the course of the drafting or whenever—I do not think it really matters. Help me out here. Which document does that analysis of the various compensation levels? For instance, you must have looked at the critical issues, being the \$1,500 long-term care cap, \$1,500 per month, the wage level and so on. Is there a particular document that deals with those issues?

Mr Cheng: I think there is a total report that deals with almost all the benefits—

Mr J. B. Nixon: Which one is that?

Mr Cheng: —being the OMPP, but not all benefits are identical to the final Bill 68. I believe there were several last-minute changes that I was not aware of.

Mr J. B. Nixon: I see. Which document is that?

Ms Parrish: Document 24 gives quite an extensive report. It also, responding to your earlier questions, shows in a number of cases the impact of OHIP

Mr J. B. Nixon: Okay.

Mr Cheng: Following up on your point about the monthly cap on long-term care, I believe we have always used \$3,000 per month in my assumption. I do not recall we used \$1,500 per month in any costing.

Mr J. B. Nixon: Okay. Did you look at indexation?

Mr Cheng: I must have looked at indexation, at least during the Osborne study, but I do not recall whether I have done one for this particular project.

0940

Mr J. B. Nixon: Did you do any work for Osborne?

Mr Cheng: Yes. I am the consulting actuary to Justice Osborne.

Mr J. B. Nixon: When you looked at indexation for Mr Justice Osborne, can you tell me what the premium impact was of imposing

indexation on the compensation levels he was suggesting, in rough terms?

Mr Cheng: I do not recall the figures. There is a nominal increase, but the nominal increase would be offset by a reduction in bodily injury claims as well. Indexation usually benefits the people who are responsible for accidents, because if you are not responsible for accidents the tort system would provide indexed benefits to you in any case. If a claimant has a very short-term disability, indexation or no indexation makes very little difference. I do not recall what Justice Osborne recommended. It has been quite a while ago.

Mr J. B. Nixon: I think I understand you, but I just want to go over it again. You are suggesting there are a number of things that flow from indexation. One, it has little impact on people who are injured for the short term because they have a short-term draw on—

Mr Cheng: If it is a six-month disability, there is not much indexing in six months.

Mr J. B. Nixon: Okay. In the context of Osborne, who recommended full tort and expanded no-fault benefits, some so-called innocent victims as opposed to not-so-innocent victims would resort to the tort system and obtain indexation through the courts.

Mr Cheng: That is right.

Mr J. B. Nixon: That is the crucial difference in this regard between Bill 68 and Osborne's proposals because not so many people have resort to the court system, I would suggest to you.

Mr Cheng: Under OMPP?

Mr J. B. Nixon: Under the OMPP, Bill 68.

Mr Cheng: Yes. Only people who have permanent disabilities or fatalities or whatever.

Mr J. B. Nixon: Therefore, the impact of indexation would be greater under the OMPP, would it not, or would it?

Mr Cheng: Greater in total dollar terms?

Mr J. B. Nixon: Yes, on the premium. The reason I suggest that to you, and tell me if my assumption is wrong, is that my assumption is that more people would be utilizing the no-fault benefits than they would be under Osborne's system.

Mr Cheng: No. The number of people who utilize no-fault benefits should be identical because you are entitled to the no-fault benefits regardless of fault.

Mr J. B. Nixon: I get you.

Mr Cheng: So that should be identical.

Mr J. B. Nixon: That makes sense. Going back, is your analysis on indexation to be found in Osborne's report or was it—

Mr Cheng: I think, yes, it would be in that report.

Mr J. B. Nixon: It is actually laid out. The discussion is there?

Mr Cheng: Yes.

Mr J. B. Nixon: Okay.

Mr Cheng: The assumptions are embedded in that report.

Mr J. B. Nixon: Bear with me for just one moment because I am trying to get a lot in in a short time.

There is a lot of concern being expressed about the level of wage-loss compensation, a lot of argument around what the appropriate level is: should low-income earners subsidize high-income earners? Is \$450 net of tax going to cover a majority of Ontarians and so on and so forth? I am wondering if you did any work that could help us in identifying the premium cost associated with an increment in the wage-loss compensation?

Mr Cheng: I think I have done the study quite a while ago, I think also for the Ministry of Financial Institutions, but probably in late 1986, and that we show the various levels of weekly benefits. The incremental change is not great. However, every time you raise a weekly wage level to a very high level, only people who are at a high wage level would benefit from that.

Mr J. B. Nixon: Right.

Mr Cheng: And since this is a mandatory product, it is probably not desirable to set the maximum weekly wage above the great majority of the population.

Mr J. B. Nixon: First of all, \$450 net of tax is equivalent to what amount gross, approximately?

Mr Cheng: I do not really recall.

Mr Ferraro: About \$29,800, \$29,500, something like that.

Mr J. B. Nixon: What number or percentage of Ontarians does that cover, of working people?

Mr Cheng: If the individual has no other source of benefits, the maximum level is at the median industrial wage level, but the benefits in the plan are only 80 per cent of your gross earnings. So we probably cover up to 90 per cent of the population.

Mr J. B. Nixon: Ninety per cent of the population.

Mr Cheng: Yes, when you take into account people who also have employee benefits.

Mr J. B. Nixon: Thank you. We have heard that there are a variety of types of psychological injury. There is the head injury, closed-head injury, there is post-trauma stress, there is continuing pain and there are a variety of psychological disorders. We have heard a lot of submissions that some of or all persons with those injuries should be allowed to sue and get over the threshold. I know you were asked this before. How would you go about trying to identify the premium change that would be associated with an amendment to the threshold?

The Chair: In 30 seconds or less.

Mr Cheng: In our claimant database we know the injury type of the individual, so by picking out the types of injuries you describe, we can see how many more claimants would pass the threshold.

The Chair: Mr Runciman, you had a motion?

Mr Runciman: I think we had agreed that we were not going to have formal motions in this period of the meeting, and I made a request and it was agreed to. I gave up my questioning time so that Mr Carr could appear before us for 15 minutes to give his views on the documentation that was tabled.

The Chair: Okay, is there unanimous consent?

Mr J. B. Nixon: I do not know if it is appropriate, first of all.

Mr Runciman: You son of a bitch. I gave up my time. That son of a bitch did not say a God-damned thing. I am telling you right now, he is raising this as a complaint after I gave up my time so that he could question the witnesses, and now he is saying it is not appropriate.

Mr J. B. Nixon: You can have your time back.

Mr Runciman: Christ, I want the witness here.

Mr J. B. Nixon: I do not think it is appropriate.

Mr Runciman: Yes, you don't.

Mr J. B. Nixon: That is right.

The Chair: We can deal with it very quickly. You have the option of putting a motion, and given the numbers that are in the room—

Mr Runciman: We made an agreement there would not be a motion. This turkey asked for that agreement and we went along with it.

The Chair: I am still under the direction of the committee.

Mr Runciman moves that Professor Carr be allowed 10 or 12 minutes to present his views, that the most respected economist be allowed to present his views to this committee on the information that was tabled before this committee on Monday.

Discussion, or are you ready for the question? You said Monday, or Tuesday?

Mr Runciman: Or Tuesday; whatever day the information was tabled before the committee.

Mr J. B. Nixon: Let's do it now.

The Chair: Without putting words in your mouth, you would like Professor Carr now.

Mr Runciman: I want Professor Carr to appear before us immediately, yes.

The Chair: The motion said either Monday or Tuesday. I want to make it clear. All those in favour? All those opposed? The motion is three and three.

Mr Philip: No, it was not; it was two and three.

The Chair: We can go to a recorded vote, if you want. All those in favour?

Motion agreed to.

The Chair: Ministry officials, thank you very much. I am assuming Professor Carr is here.

Mr Kormos: I have a motion of my own.

0950

The Chair: I will entertain that after Mr Carr is finished, and if it is a procedural motion, I will entertain it at 12 o'clock.

Professor Carr, I have 12 minutes. If there is time for questions and comments and discussion, we will take it from there. Please identify yourself for the benefit of Hansard and proceed.

DR JACK CARR

Dr Carr: I am Jack Carr. I am a professor of economics at the University of Toronto. Given the volume of documents here and given the time I had, I only really have preliminary remarks, so I really should not be that long.

One preliminary remark, before I make my sort of main comment on this report, is that it is very interesting, one can see how governments make decisions by sort of inferring from all the changes that actuaries made and all the reports. The main actuary is a Mr Cheng, who did 24 of the 39 studies here, so I am going to refer mostly to his studies. He was here and he was the main government actuary. He initially looked at choice and then he started looking at thresholds

and at stronger thresholds. Then he started looking at a threshold which had a unique element to it, that most threshold systems allow victims to sue for excess economic loss, no matter whether they pass the threshold or not.

On 26 April 1989, in his report, he first analysed the threshold where you could not sue for excess economic loss. He called this the hybrid system. On page 2 of document 10 he stated, "Your proposed system clearly reduces more benefits than any previous threshold no-fault system under consideration." So as early as 26 April 1989, Mr Cheng was advising the government that the threshold that it was considering—one which was essentially Michigan's, plus not allowing suits for excess economic loss—was the most stringent under consideration and it clearly reduced benefits to innocent accident victims.

If you go on in the documents you see changes taking place. You see an even more stringent threshold, more stringent than Michigan's, what Mr Cheng called the very restrictive Smith-Lyons threshold. That is how he referred to it. It first appears in document 18 on 6 June 1989, and that is essentially the threshold which is in the Ontario motorist protection plan, "permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature."

So the first report of Cheng which deals with that is in document 18 and it appears on 6 June 1989, I might add, while the Ontario Automobile Insurance Board hearings were still going on, prior to the finished document of the OAIB on 14 July. So clearly the government had considered the threshold that it is now proposing while the OAIB was going on and no reference was made to it. I think this is a problem because in the OAIB hearings there were all these various thresholds subject to cross-examination and this committee does not really have the benefit of the guidance of the OAIB on this particular threshold. It would have been nice if it had been referred to the OAIB so that the guidance of all the actuaries and all the experts could have been given on it. One wonders what the cost of the OAIB hearings went to. Some people may say that those costs may have been wasted.

Let me get to the main document, which is the closest to the OMPP. That is document 24. I want to refer to the main table in that document, and that table refers to private passenger automobiles. It looks at other things, but most of our system is concerned with private passenger automobiles. I think it is important to understand

what Mr Cheng did. Mr Cheng analysed essentially the OMPP. He did not consider tort reform.

By the way, Mr Nixon is gone.

He did have the disability benefits indexed. He had the benefits indexed according to the CPI, with a maximum cap of six per cent. So he had the benefits indexed; he did not have any change in OHIP. He had no change in premium tax and he had no change in the property damage system. Property damage was done as the way it is now. Essentially, he had a system which did not include a lot of other things which have in fact helped insurance companies.

When he did that, I think it is important to understand, if you take a look at his figures and you take out the property damage figure and only look at bodily injury, what you find is that lost costs have decreased by 47.7 per cent. I think that is an important figure to keep in mind because what this means is that benefits to injured claimants are being reduced in the system by 47.7 per cent.

That is net. That takes into account not only what is taken away but also what is given in terms of the increase in accident benefits. On net, injured accident victims lose 47.7 per cent of the benefits they were previously going to get.

I do not know how this could be called the Ontario motorist protection plan. When you look at it net, what you take away and what you give, there is a net reduction of 47.7 per cent. If you want to convert that to dollars in terms of dollars in September 1990, I calculate that those dollars are \$823 million that innocent—not that "innocent"—that all accident victims lose, and that is a substantial sum of money.

Mr Kormos: That is scandalous.

Mr Philip: Where does that money go?

Dr Carr: Now, let me tell you that Mr Cheng said that so much money is saved that not only do you not have to raise premiums by eight per cent in the metropolitan areas, not only do you not have to give insurance companies a reduction in their premium tax, not only do you not have to eliminate their OHIP contributions, not only do you not have to eliminate indexation, but with the plan on the table, you save so much money you could reduce premiums for private passenger cars by \$40. So not only will there not have to be an increase, this report says there could be a decrease of \$40.

What I would like to know is why the government—and I think this committee should investigate—did not accept this report and institute a reduction or at least improve the benefits,

because not only did they not reduce premiums, they then went ahead and made the situation a lot worse. They put in tort reform, which helped the insurance companies; they eliminated the premium packs, which helped the insurance companies; they eliminated OHIP contributions, which helped the insurance companies, and they eliminated indexation. I think one has to look at this report. When we look at these numbers, one has to ask oneself how we could call this the Ontario motorist protection plan.

Just one other thing. When Tillinghast reviewed it, Tillinghast said that 55 per cent of costs are removed and that 96 per cent of injured claimants will not pass the threshold. Mr Cheng assumes more costs are removed. He assumes 64.8 per cent of costs are removed. When I do the calculations, I find that according to Mr Cheng's own estimates, that gives you 98.3 per cent of claims being removed. But however you want to convert that number, call it 90, call it 98, using Mr Cheng's own numbers, you remove somewhere in the order of magnitude of \$800 million. You remove substantial benefits from innocent accident victims, which saves over \$800 million for insurance companies.

Those are my initial reactions. There was a lot in this material, but in the short time I had, I think the committee should look at Mr Cheng's report—in particular, I think the key document is number 24—and ask why this, in fact, was not accepted by the government, because if it had been, there would have been substantial savings even in that particular document, enough to reduce premiums, not increase them.

The Chair: Mr Kormos, for up to a minute.

Mr Kormos: What you are saying, Professor Carr, is that the government's own actuaries show that under this Bill 68, this new government bill for this Ontario motorist protection plan insurance scheme, there is going to be a saving to the insurance companies of \$161 per car. They are going to pay out that much less money. Rick Ferraro sat right where you are about 45 minutes ago and he said more money is going to be paid out to people in Ontario if this bill is passed. How could he say that?

1000

Dr Carr: I think Mr Ferraro will have to answer for himself, but he must have misunderstood. When he initially answered your question he said, "But there is going to be more benefits." That figure includes the benefits.

You have to understand that Mr Cheng valued the increased benefits and then he valued the benefits that were taken away and on net he got

this reduction in benefits. So that was a net figure. Now I must admit I took his figures and I converted them to 1990 to give you an \$823-million figure. Because injured claimants, on net, lose this result, it alone, in a savings to insurance companies, according to Mr Cheng's figures, a number in excess of \$800 million.

Mr Kormos: Yet premiums are going up by up to 50 per cent.

The Chair: Ms Oddie Munro for a minute.

Mr Kormos: I think we are being scammed.

Ms Oddie Munro: To what extent do you believe the limitations that were elucidated by Mr Cheng have been commented on by yourself? Do you feel in the comments you are making now you have taken into account the limitations and also the methodology that he has used? He says, for example, that "not all of our assumptions should be considered equally reliable. We have assumed that all severely injured persons were considered."

Mr Kormos: Oh.

Ms Oddie Munro: I mean, it is my question. So I am just wondering, since you are the expert coming to talk about it, in research, in my experience, one always goes to the limitations in the methodology.

Dr Carr: Let me comment on that. That is a standard page in all actuarial reports, so this is something he does, saying that there are uncertainties. But this is his best guess, okay? He says, "Look, you can't be 100 per cent certain of what is going to happen. You can't interpret the threshold and know now what courts will interpret, but here is my best guess. It could be worse than that, it could be better than that. Here is my best guess," and these are the numbers in his best guess.

The Chair: Professor Carr, thank you very much.

Dr Carr: You are welcome.

The Chair: From the St Catharines and District Labour Council we have Mr West. The clerk has distributed copies of your brief. We have approximately half an hour, and if you could leave some time for questions, comments and discussion, we would appreciate that. Please identify yourself for Hansard and the television audience and then proceed.

ST CATHARINES AND DISTRICT
LABOUR COUNCIL

Mr West: I am Rob West, the president of the St Catharines and District Labour Council. I am a

member of the Canadian Paperworkers Union. I actually live in Thorold, but the St Catharines and District Labour Council represents the surrounding area of St Catharines.

I do appreciate being here today. Going on after an economist makes me a little bit nervous, I guess, because when you are dealing with so many figures, it does boggle the mind.

Mrs LeBourdais: They are on both ends, do not worry.

Mr West: Yes, I was going to suggest that. I understand you have been in session for about a month now. I think you must have enough figures going through the mind that you are probably a little bit tired of it.

Mr Philip: But you have common sense, which is more than the government has.

Mr West: Yes. I am here representing approximately 16,000 members in St Catharines and district. They are not only trade union members; many of them are drivers, including myself. I had just a glorious time on the Gardiner Expressway today.

On behalf of the St Catharines and District Labour Council, I am really glad to be appearing here today so that I can express our sincere objections to the intended auto insurance changes through Bill 68. In fact, the 16,000 members of our labour council are a small fraction of the drivers in St Catharines and the district who will be adversely affected by the government's intended insurance changes. Many of these motorists, I am quite sure, would greet the opportunity to appear before you in order to register their personal objections and complaints to not only Bill 68 but the ongoing ripoff by the huge insurance companies, and I think that is the general feeling of the motorists in Ontario.

As with the brief already presented by the Ontario Federation of Labour, which is our parent group along with the Canadian Labour Congress, we also feel Bill 68 is very seriously flawed. Without intending to completely restate their brief—I am sure you have heard many different avenues and reflections of the bill—and without getting into a lot of repetition today, we expect to illustrate how unfairness to our unionized workforce is entrenched throughout this bill. That is what I will be dealing with, mostly how it affects the workers. The promise of lower insurance rates has been totally overlooked, and workers' compensation or OHIP, supported by dollars from our employers and workers, are being used to bolster the profits for those hoggish insurance companies.

We, too, recognize that Ontario's mandatory—and I stress mandatory—auto insurance and the private system that administers it is in a crisis state. Left to itself, it is very obvious that it will never be anything else but a system of sky-high premiums, discriminatory rate structures, access problems, affordability problems for even good drivers, and an abuse of the system's resources used for policy marketing and claims litigation.

We feel the solution proposed by Bill 68 is totally unacceptable. The burden placed on individual workers who may be required to use sick leave credits or sick pay to offset the already limited responsibility of the insurance company for lost wages that are incurred by the accident victims is not only unfair but damned well underhanded. I would like to know if this government is dumb enough to expect workers—and even employers—to sit back and subsidize the auto insurers. That is basically what we feel is happening, but it appears as if the government is willing to do this in this piece of legislation.

I am quite certain in your travels over the past month it has been pointed out that Bill 68's no-fault benefit schedule will force the Workers' Compensation Board to pay income replacement benefits that formerly were paid by the auto insurers, and I heard a little bit about those figures come out this morning while I was waiting for my turn. The WCB itself has estimated that Bill 68 will increase its annual costs by at least \$25 million. Maybe that is small peanuts in the insurance industry, but that is big money when you are talking about working people. It is sure a nice, tidy subsidy.

The no-fault scheme itself and the no-fault benefits structure are certainly not worth leaping from your driver's seat with joy and excitement. The scheme itself transfers the financial burden of responsibility from the insurance companies to the backs of injured and disabled victims of motor accidents. The benefits structure is far too low, and because we represent working people it is imperative that we point out this.

There is no reason for establishing legislated benefits that are so much lower than even those listed under the workers' compensation system. For example, the ceiling of \$450 is ridiculously low in comparison with the WCB's 90 per cent of regular pay. I believe that ceiling comes in around \$727 in 1990. That is simply adding insult to injury, and the benefits ceiling is not even indexed. Indexing is something we truly have to look at in all support systems of today.

On top of everything else, and a real sharp slap in the face after the obviously empty 1987

election promise, is the fact that Bill 68 will allow premiums to continue growing while safe drivers will still be penalized because of their age or occupation. So there has been no structural change there. The reduction of the insurance premiums is just not there, nor has control of rate-setting been placed into the hands of Ontario motorists, the people who drive the cars and pay the insurance. The only place where fairness will prevail is there, the only place the legislated insurance can be evaluated and administered fairly. You just cannot legislate a commodity or a service and hand it over to a group of large private companies and then expect the thirst for profits not to run wild after their arbitrary decision process for rate justification has been honed. It is just too much to ask.

1010

There is such a vast empire of rate unfairness and scaremongering or bullying by insurance companies within their own system that it is truly mind-boggling. Just ask anyone who pays that rate bill. There are so many insurance story nightmares that are true, not just fiction, that it is very overpowering. I have heard many of them myself and it just makes you wonder.

The insurance industry depends so much on the computer button of today's recordkeeping techniques that if you happen to sell a vehicle and you have a little gap before you buy another one—you want to drop your insurance and save a few bucks—chances are your insurance agent is going to tell you, "You may not get back on the rolls." They may reject you. You may have a 20-year, accident-free record, no speeding tickets, no infractions of any kind, but because there is a gap there, a gap in the system, they are telling us they are penalizing us for that. I have been told that myself.

Of course, there are tricks to get around that type of gap and your agent will probably suggest the trick to do it. When the agents have to resort to tricks to protect their clients within their own system, it is crazy. That is part of the system that we want changed, part of the representation of the Ontario motorists that we feel is not looked at in Bill 68. It is not even addressed in discussions. Your insurance agent in this case would probably tell you, "Pay a small charge of insurance coverage, maybe fire and theft, on a vehicle that you do not own any more and that will keep your name in the computer." It may be \$58 or \$60 a year or something. It is no big deal. But why should we have to do that? It is crazy. So we look at the insurer who has to pay coverage on insurance that only exists on paper. If that is not a

scam—to use the word that Mr Kormos likes to express himself with, and rightly so in these cases—we are not really sure what it is.

Working people are paying too much for insurance in Ontario and that is a fact. Private insurers are charging consumers hundreds and even thousands of dollars a year more than they are receiving service for. The entire system of vehicle insurance must be changed. Bill 68 does not create the change that is needed. It simply puts more control into the private insurance company's hands, with less responsibility for claims fairness and financial commitment.

As we have seen over the past years, rate gouging is only part of the private insurance ripoff. Ontario motorists also get arbitrary and unfair treatment from insurers. Massive increases are imposed for minor traffic infractions, and companies use any excuse to deny renewal of coverage or cancel it outright. Agents are forced to find loopholes around the system.

When even claiming on your insurance policy can mean cancelling the policy or unrealistic renewal terms, it is obvious to all who drive a vehicle in Ontario that a new way of administering mandatory insurance is desperately needed.

All the tinkering, along with the smoke and mirrors in Bill 68, will not improve the fairness of our insurance in Ontario. The basic vehicle insurance in Ontario, we feel, must be nonprofit. I know you have heard this before and I know it sends shudders through some of you that we look at a nonprofit situation in Ontario for insurance, but it is felt by our group that this is the only way we are going to go in the direction of fairness. Certainly we are not trying to do agents out of jobs and we are not trying to cut back in areas that will put other people on poverty rolls who would be put out of the insurance agents' jobs; there will be jobs for them. There will be different types and avenues of insurance coverage that will be over and above basic.

We are confident that improved benefits for accident victims are needed, no matter who caused the accident, and that is related to a no-fault system, certainly, but we also believe just as strongly that people must retain their right to sue. As long as car insurance is controlled by private companies, however, any move to a comprehensive no-fault plan will simply lead to more rate gouging with much higher premiums both directly and indirectly. The indirect part is where many of our members may not realize, until they are in the circumstances of an auto accident, how much the indirect cost is going to affect them and that is through their benefits in

the workplace. All the other injustices will continue as long as it is in private hands.

Yes, private insurance companies would have us believe the famous snow job that a free and competitive marketplace is the most efficient and economical way to provide the best service at the least cost. I have heard that many times. I am sure many of you have. Some of you may believe it, but anyone who has paid a recent insurance premium and at the same time tried to reason with the increases, would steer clear of a snowstorm created by that line.

Responding only when threatened, patching up here or there and massive publicity campaigns at drivers' expense will not solve the problems in the private system administering our mandatory insurance. We must replace it with an efficient and affordable driver-owned system. I cannot express it strong enough: we feel Bill 68 must be scrapped.

I respectfully submit that on behalf of the St. Catharines and District Labour Council, who felt that this was an important enough issue to send me to Toronto to make this presentation instead of simply sending off a few letters to our MPPs to advise them of our concerns. Thank you very much.

Mr Kormos: It is even worse than that, because the government has secret actuarial studies that it only just released at the beginning of this week. They were in its possession through the bulk of last year, because they date from January through to July, short of the last one; 38 of those 39. They did not let the Ontario Automobile Insurance Board examine those reports. They did not let the Ontario Automobile Insurance Board examine this threshold scheme and instead the government wanted to operate in secrecy.

What its secret documents reveal—and they were released after a fair amount of pressure and only after all of the witnesses, by and large, had appeared; today is the last day of hearings—is that the government did not want to have these hearings at all. They were forced into having these hearings. The government wanted this bill to be passed before 21 December 1989 so the insurance companies could get on with making the massive profits that were in store for them. But the government was forced into having these hearings and we had to fight to have the brief period of hearings that we did. Even at that, the government has had one heck of a time getting people to come here or to come to Windsor, Sudbury, Thunder Bay or Ottawa to support this legislation. By and large, the only parties coming

before this committee supporting the legislation are insurance companies.

Mr Velshi: Come on, speak the truth.

Mr Kormos: And rightly so, because they have massive profits in store. The Liberals have good reasons to be promoting insurance company interests. I should tell you I acknowledge that trade unions support the New Democratic Party both morally and financially and indeed supported me in my by-election campaign and I tell you this, I am proud to be representing working people's interests here in this Legislature and here in this committee.

1020

At the same time, the auto insurance industry supported these Liberals with big bucks in the last general election to the tune of over \$100,000 by way of contributions and, indeed, Lily Oddie Munro, Carman McClelland and Brad Nixon were the beneficiaries of some very direct charity—a charitableness of spirit that insurance companies do not seem to display to their clients but they certainly did to those Liberal candidates in the last general election.

I wonder if FAIR is proud to be advancing the interests of the private auto insurance industry. When it comes to pride or shame, they will have to speak for themselves. Rick Ferraro, the member for Guelph, has been forced into this; he is the parliamentary assistant. Murray Elston, the minister, has not shown his face in this committee since these hearings commenced. He came here the first day. He came here to crap all over people like Ralph Nader. He came here to crap all over people like John Bates, the president of People to Reduce Impaired Driving Everywhere. When they appeared to make their valuable submissions, Murray Elston was nowhere to be found and he sent poor Rick Ferraro, the member for Guelph, to come and take all the heat for what is a bad bit of legislation designed to increase the profits of the insurance industry.

What we discovered today is that Rick Ferraro has been misled; the parliamentary assistant has been misled to the point where he has actually been telling this committee and members of the public that this bill is going to result in more money being paid out to victims. That is the most untrue thing that could ever be said, because what we learned today from the government's own secret actuarial studies is that the net decrease of compensation per vehicle is \$161 and that there will be a net saving and increased profits to the auto insurance industry to the tune of some \$800 million. That is scandalous. I tell you, Mr West, the \$100,000 and change that the

auto insurance industry paid to the Liberals in the last general election was the best investment they ever made. Talk about casting your bread upon the waters; it has come back more than tenfold; it has come back manifold.

The government has used marketing techniques like calling this no-fault when it is not a no-fault system; it is a threshold system. It is designed to keep people away from any prospect of compensation. It is designed to reduce the gross amount of money paid out to victims. Indeed, it does that very effectively and it does it by becoming the most highly subsidized auto insurance industry—subsidized with taxpayers' dollars in the first year to the tune of some \$140 million to \$145 million alone, subsidized by taxpayers' dollars.

Ms Oddie Munro: Thank you very much for coming before the committee. We have heard from a variety of people and I think it is safe to say that not all people have been universally against or universally for the scheme. I guess this is what the committee is here to do: to listen to everyone.

Yesterday in Ottawa and the day before in Toronto, we heard from two people, one speaking on behalf of her husband and the other who actually had been injured in a car accident and who felt that the rehab benefits that were proposed were indeed significantly better than what they would have had and had access to at the moment.

It is not really part of your proposal, but it is my understanding that as regards the immediate rehab and the long-term care, the money for equipment is a significant improvement. Are you not referring to that because you agree with it or because you really wanted to base your criticism on the income portion?

Mr West: I found in our brief that I did not particularly want to refer to everything. I am certainly not aware of everything. As president of the labour council, I am involved in many, many things and we just do not have the opportunity or the resources to research every detail of any bill that comes along. We have to comment on what is most familiar to us.

I am sure there are parts of this particular legislation, as with any legislation that goes through, that do affect some small portion of the population of Ontario in a good way or a positive way, and certainly you can pick out good and bad parts of any piece of legislation. I feel on behalf of the labour council that this piece of legislation will be detrimental to the majority of the people in Ontario—not entirely all the people.

Ms Oddie Munro: Certainly the no-fault side of the bill places emphasis on rehab, including return to work, occupational therapy and a number of examples like that, but I am sure that you are already familiar with—you mentioned the comparison with the Workers' Compensation Board, but that is fine. I understand where you are coming from. You only have so much time, but I just wanted to point out that several people have spoken to the significant improvements in rehab.

Mr West: I appreciate your pointing that out to me.

Mr Velshi: Mr West, thank you for coming over. As to your comment that it is going to be detrimental to the majority of the people, I have some difficulty with that statement. I understand where you are coming from. I have no real problem, but the difficulty I have is—I will give you the example of Sault Ste Marie saying that the majority wants to speak English only. If you agree with what you say, that the majority's will is important, then you have to agree with what Sault Ste Marie has done with unilingual English. The minority—

Mr West: I am not talking about the majority in Sault Ste Marie. That is talking about Sault Ste Marie. I am talking about Ontario.

Mr Velshi: But you talked about the majority and I am talking about the minority. As a government, we have to look after everyone. Unfortunately, Mr Kormos is not here so I will not comment on what he said about the fund-raising side of things. Similarly, if he thinks that \$100,000 donated to the Liberals is deciding this here, then obviously he is in favour of this legislation because if he does not you are going to do a Shirley Carr on him. I think it works both ways and perhaps Mr Kormos should stop using this line.

But the important thing is that there were three people who came to us in the last few days in wheelchairs and those are the people I am concerned with. When they came I was perfectly happy with what we are doing, because we are looking after those people who have fallen through the safety net. Do you get what I mean? Those are three people who came in and said that had this bill been in place when they had their accidents, they would not have been in the devastated position they are in today.

I would like you to read the testimony of those three people. I do not have it in front of me right now, but I would like you to do that and respond to me, because I want to know what your feelings

are on the personal tragedies of people we are looking at, rather than a group.

The trade unions do a damn fine job. I think they are very strong and hopefully you will remain strong because you are doing work for the working people in this province, but there are other people who are not part of the trade union movement who do not get the support from the trade unions and somebody else is going to have to look at that. That is what we are planning to do.

Mr West: First, we work on behalf of all working people and all people of the community within the community we are situated in, so it is not just card-carrying trade unionists that we work on behalf of and that is another reason why I am here today.

Also, I feel that the majority—again I say “the majority”—is not being looked after in this because one of the main goals that was stipulated by the Premier (Mr Peterson) was a lower auto insurance rate. I do not see that happening with this program, with this no-fault bill. I do not see that happening, so there is your majority right there that is not being looked after and that is the majority of Ontario.

The Chair: Mr West, thank you very much for your presentation.

Dr Sweeney, I think the clerk has distributed copies of your two-page brief. Please have a seat. The next 15 minutes are yours. Perhaps you could leave us some time for some questions, comments and discussions. Identify yourself for Hansard and then please proceed.

DR JAMES E. SWEENEY

Dr Sweeney: My name is Dr James Sweeney. I am a psychologist in private practice in London, Ontario.

Committee members, as a neuropsychologist in private practice, specializing in the assessment and rehabilitation of brain-injured individuals and those who have been traumatized psychologically due to accidents, I feel a moral and a professional obligation to go on record in opposition to the proposed Ontario motorist protection plan.

I am against this proposed legislation because it is unjust and because it undermines the financial security of a large segment of my patient population. In so doing, it puts an unnecessary obstacle in the path of rehabilitation. It puts an unnecessary obstacle in my path as I try to rehabilitate my patients who have both psychogenic problems and cognitive problems related to brain injury.

1030

According to this proposed legislation, a person can sue in order to fully recover for damages for pain and suffering only if an injury is physical, continuing, permanent and serious, involving an important bodily function. I believe that this means many patients I treat who have either (1) sustained brain injury which has produced subtle cognitive deficits, or (2) been so traumatized psychologically that they have become emotional cripples, will not be able to pursue fair compensation for significant accident-related disorders. This is immoral and this is unjust.

The proposed plan provides a weekly benefit up to \$450 for injured parties unable to return to work. The automobile insurance board has said that such benefits are generally insufficient to maintain pre-accident standards of living. Therefore, these benefits would reduce but certainly not remove the financial burden this legislation would impose on my patients.

Let me provide a hypothetical but representative case history, which demonstrates a major concern. A high school principal driving his car through an intersection on a green light is hit broadside by another car that fails to stop for a red light. Despite wearing a lap belt and a shoulder harness, the principal sustains multiple minor cuts and abrasions and a blow to his forehead. He appears somewhat confused after the accident and is taken to hospital by ambulance for examination. He is released from hospital after being informed that he sustained a mild concussion.

After two weeks of rest at home, he returns to his job. He soon finds that he is no longer the organized, decisive, patient principal he once was. The job seems more difficult somehow and he has to struggle to cope. Over time the situation remains the same and he soon realizes that because of his difficulties, further promotion is highly unlikely. He is eventually seen for assessment by a neuropsychologist who determines that he has sustained mild, prefrontal brain injury.

Now, under the proposed legislation this innocent victim would not be able to sue for compensation because his disability would not be considered serious. He is still at his job. He is still functioning passably, but he cannot do things nearly as efficiently as he could before. Such a situation would be extremely demoralizing for the patient and would certainly represent a significant obstacle to cognitive rehabilitation that I would be trying to provide. I believe that

such an outcome is unacceptable and morally wrong.

It is well known that debilitating levels of emotional depression can follow a serious motor vehicle accident. Such depression may be associated with brain injury or the psychological trauma of the experience. I deal with both forms of depression in my practice. According to my reading of the proposed legislation, a person would be able to sue if a case of serious depression was due to brain injury, but not be able to sue if due to an equally valid psychological cause. I must take very strong exception to the clear implication in this proposal that psychological injuries do not warrant the same degree of compensation as physical injuries.

Psychological injuries are often as debilitating, and sometimes more debilitating, than physical injuries. To say or imply otherwise is to be insensitive to the needs of accident victims. The government has taken, in my view and in the view of many others, a giant step backwards in this legislation by discriminating against psychological injuries.

Finally, the proposed legislation does not address the possible need for psychological help by the family members of the injured party. The effects of negative psychological changes in the accident victim can be absolutely devastating to a family. Hence, there should be a provision in the legislation for monetary benefits to cover the cost of treatment of maladaptive psychological reactions of family members. Therefore, I recommend the following modifications to the Ontario motorist protection plan:

1. Psychological deficits, whether emotional or cognitive, should be fully compensable if serious or permanent regardless of whether the cause is physical or not.

2. Weekly monetary benefits should be increased to a level that would not reduce the pre-accident income of victims, and should provide, if necessary, for treatment of the psychological reactions of family members.

That is the end of my formal presentation

The Chair: Thank you, Doctor. I have Mr Ferraro on a point of information and I have Ms Oddie Munro and Mr Philip.

Mr Ferraro: Dr Sweeney, thank you for your brief. On the suggestion you made that "the proposed legislation does not address the possible need for psychological help by the family members of the injured party," I suggest to you that indeed it does. If I may refer you to the benefits package, part II, where we deal with supplementary medical and rehabilitation bene-

fits, it states and I will just paraphrase it, in subsection 6(1), "The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury as a result of an accident." Then I will go back over to the definition, if you will, of "insured person." There are five classifications, but I think the one that may ease your mind a little bit is clause 2(1)(e) "the named insured, his or her spouse and any dependent of either of them who is not the occupant of an automobile or of railway rolling stock that runs on rails, who suffers physical, psychological or mental injury as a result of an accident" is indeed covered.

Mr Ferraro: It was one of the changes, doctor, that we did make, as pointed out by Mr Endicott, and perhaps you were not aware of it.

Dr Sweeney: I was not aware of that.

The Chair: We will get you a copy of the schedule of benefits highlighting that.

1040

Dr Sweeney: May I respond and say that the modification mentioned spouse, but does it mention all family members?

Mr Ferraro: Yes, it says "his or her spouse and any dependant of either of them."

Dr Sweeney: Okay, fine. Thank you for that clarification.

Ms Oddie Munro: I wonder if you could just give me an example of the range of cases that you treat and the point at which you are called in to treat them. You talked about the case of the gentleman with concussion and that eventually he showed presenting evidence of more significant damage. I am asking this, just so you know where I am coming from, because on the no-fault benefits side a variety of rehabilitation treatments and services will become available. I am wondering whether or not—I do not know what kinds of treatments are available from a neuropsychologist—you feel at the current time you are brought in early enough to treat accident injury victims.

Dr Sweeney: Actually, I should tell you that about 50 per cent of my patients that I treat are mildly brain-injured. I am usually brought in when they find, after a long and difficult struggle, that they cannot cope with the demands of their jobs that they could cope with very easily prior to the accident. They are sent to me for assessment with the question, "Is there any brain injury here from a functional point of view, and if so, what is the nature of it, what is the extent of it and what are the implications for this person's functioning?"

Very often these people can go through the movements, like this high school principal could go through the movements. At least part of what I present here is an actual case that I was involved in. He can go through the movements because he had overlearned an awful lot of what he had to do, but when it came to anything new, any decision-making, any organization, he could not do it.

His career was definitely limited as a result of that head injury. However, he could continue to function. He could continue, barely, mind you, to meet his obligations as a principal. He was not let go, but he agonized emotionally with the efforts he had to make in order to just barely approximate the executive, if you will, that he was before.

This man has lost an awful lot. He was considered to be a rising star in the field of education in a fairly large board of education. He is not a rising star any more. I am sure that some of his superiors are looking at him staying where he is and maybe even eventually getting a job that does not involve as much decision-making so that he will be able to continue his career in peace, so there would not be a lot of emotional agonizing going on within him.

That is a very typical case. These people are back to work and what benefits do they get? Very little. He stayed off work for about two weeks and came back. Luckily, he had a very competent, efficient secretary who has been carrying him, and people feel sorry for him, so he is probably going to stay in that position. But it is agonizing. Where would he fit in this new system? What benefits would he get? His career has really been ruined in some respects, and where is he? This proposal, I would suggest to you, does not in any fair way meet the losses this man has incurred and will continue to incur as a result of a very limited career.

Mr Philip: My experience in dealing with families of accident victims is that often the spouses are so affected by the accident and by what has happened to their mate, husband or wife, that they are psychologically affected to the point where they lose work, where they cannot cope with their jobs and may in fact have their careers interrupted. I would not want Mr Ferraro to have accidentally misled you or the people viewing, but if a spouse is so affected that he or she cannot go to work because of a tragic accident to a loved one, he or she is not compensated under this legislation.

Do you feel from your experience that this is a frequent occurrence in your treatment of people

who have experienced injury, that their families are traumatized to the point where they cannot effectively do their own jobs and therefore have quite an economic loss?

Dr Sweeney: Yes, this is a frequent occurrence. It is probably more frequent in cases that occur in families who live in rural areas. This is because if it is the man who was hurt in the motor vehicle accident, often the wife is not working but she is taking care of the farm or whatever, taking care of the home in the rural area.

All of a sudden, the responsibility to be a breadwinner is upon her, and she has this overwhelming psychological burden to deal with, which is this profound change in her husband. They cannot relate in any acceptable way on any level. She is expected to learn some marketable skill besides the good skill of homemaking in order to shore up the financial needs of the family, and in most cases she cannot do that. I have had cases in which this has occurred.

In one case in particular that I can recall the woman attempted suicide because her husband was rendered totally useless. He was a very efficient welder who was rendered totally useless in the marketplace. He could only sit there. He could not learn anything beyond the occurrence of the accident. She was required to get a job in order to shore up the financial income of the family. She could not meet that responsibility and she tried to escape through suicide. That is the kind of serious nature that such a situation can be.

The Chair: Thank you very much. I have Mr Ferraro on a point of clarification.

Mr Ferraro: I do not want to confuse the issue any further, save and except that I stand by my suggestion that indeed the spouse and/or dependants of the spouse who were not in the accident per se do qualify for rehabilitative care and indeed for income replacement. It is a maximum, admittedly, of \$185 after taxes but indeed—

Interjection: Unless they were working.

Mr Ferraro: Unless they were working, in which case it would be 80 per cent of gross to a maximum of \$450. So I want to be very clear on that. They do qualify for income replacement as well as the rehabilitative care.

Mr Philip: On that point of order, or whatever it was—

The Chair: Clarification.

Mr Philip: Clarification. There is nothing in the parliamentary rules that has such a point.

In fact, there is no clear interpretation of that. The insurance companies, if we look at their track record, are not going to interpret it that way. They are going to fight it.

The Chair: We can save some of the discussion, I am sure, for clause-by-clause in terms of interpretation. Thank you, doctor, for your presentation.

Dr Sweeney: I also want advise the committee that Dr Dick Allait was scheduled to present at 2:30, but due to other commitments, he will not be able to do so. Dr Barry Deathe will be presenting in his place.

The Chair: Okay. Thank you very much.
His Honour John Barr.

Mr Runciman: Mr Chairman, on a point of order.

The Chair: Yes.

Mr Runciman: While Judge Barr is getting prepared, I want to apologize to committee members for the language I resorted to earlier in the day, and if it is appropriate, to withdraw the remarks.

The Chair: Sure.

Mr Kormos: I should say, Mr Chairman, I understand.

The Chair: Your Honour, the clerk has distributed copies of your presentation. I will just say that we have 15 minutes to consider them. If you could allow us some time in that period for some comments, questions and discussion, we would appreciate that. Please identify yourself and proceed.

1050

HONOURABLE JOHN RODERICK BARR

Hon Mr Barr: First of all, my name is Roderick Barr. I am a retired judge. I have nothing to win and nothing to lose under Bill 68. I am here because this is a very important bill and I think I may be able to help. Having been here once before and again this morning, I would like to say I know a lot of members of the Legislature and of Parliament, a lot of trial lawyers and a lot of claims managers and I have not seen anyone yet with horns coming out of his head. I think we all probably have the same object in view, and that is why I thought perhaps I might serve some purpose by being here.

By background, I graduated in 1948. I practised law until 1983 and about 70 per cent of my practice was in the personal injury field, either on behalf of victims or insurance companies. In 1983, I was appointed a trial judge of

the Supreme Court of Ontario and served there until March 1989, when I had to resign following a heart attack.

In the summer of 1987 I had six weeks off. It was the time when the Osborne inquiry was sitting. I had always been interested in no-fault insurance, so I researched all the data I could find on it and presented those findings to the inquiry.

From my experience in practice, there are two things I would like to draw to your attention, because I think anything I have to say may be from a different perspective than you have been hearing.

The first is that people whom I dealt with had a very strong sense of what is fair and what is just. It would be useless to say to a victim, "Oh, it was just momentary inattention." The man or woman who was driving through an intersection or getting broadsided by somebody failing to yield the right of way at a stop light or a stop sign, or hit by a drunken driver, simply is not of that philosophical bent.

The second thing from my own experience is this: I first got into this kind of work about the mid-1950s and I heard then that insurance companies were losing money on automobile insurance. I have heard that since and I am continuing to hear it. By and large, the same companies that were losing money in 1955 were losing money, so they say, in 1989. I do not know any particular explanation. I can guess at it, but I am simply reporting that as fact.

In spite of that environment of losing money, in my time we have had a number of big companies come into the jurisdiction. I think the first was State Farm; I could be wrong. State Farm, Allstate, Pafco, Safeco, a lot of major insurers came to get into this business.

From my experience as a judge, I would like to say two things. First, very few accident cases are tried. They do not take up any appreciable part of the court's time at all. Professor Trebilcock, in his brief to you, gave an American study showing that 0.6 per cent went to trial. Based on the figures in the Osborne survey, my calculation is 0.2 per cent. Whatever it is, a very small portion of cases go to trial. Second, fault is almost never an issue of any consequence. It is seldom an issue, and if it is, it is easily resolved.

I would like to speak then about Bill 68 and make a few specific comments. About the threshold, first of all, I agree with Justice Haines, who wrote to you saying that this represents a possible or probable quagmire of litigation. Let me say why. I am not knowingly going to tell you something you have heard before, but I think it is

going to be inescapable that will happen from time to time. Here is the background of my experience coming forth.

What is "impairment of bodily function?" Does that include taste, smell, hearing, touch? How broad is that term? What is "serious impairment of bodily function?" How do you measure bodily function, the function of a kidney, the function of a bowel and so on? Having done that, how do you know what it was before the injury, and having done that, how do you determine what is "serious"?

The reason I mention these things is that there are a thousand lawsuits in every adjective here. Is it 10 per cent serious, or a 50 per cent impairment, or 75 per cent or what? What bodily function is important? I would have thought they all are. God made us complete with all these functions. I would have thought so, but some apparently are not.

The next question is, important to whom? If a person has a loss of the use of a little finger, does it matter whether he is a fat-cat lawyer or a concert pianist? I do not know the answer to that, and these things courts are going to have to decide if the threshold passes.

What is "permanent"? A common case is a doctor saying, "I know it's pretty painful now, but it'll burn out in 15 or 20 years." That is impairment; that is not permanent. But if the life expectancy is less than 15 years, then we have to have another look at it.

What is "continuing injury"? Let's take a carpenter who has a bumper fracture of the knee and after whatever time it takes to recover he is back on the job and getting around all right. The medical evidence is uniform: "Yes, this knee will wear out and in 15 or 20 years he's going to be out of a job. When he's 40 or 45 he's going to be finished, because that knee will cripple." Obviously that is not "continuing." Is that intended? I doubt very much that it is intended. And given what I know is the feeling of this committee, I think these are things that should come to your attention.

The last one has been touched on so frequently, but it is still important that I give you a judge's perspective. What injury is "physical in nature"? Obviously, if a poor woman sees her child run over before her face and she has a nervous breakdown, you can categorize that. If a person has a fracture, you can categorize that. But those are not the cases that give us trouble.

If you put your hand on a hot stove, you get burned and two things happen: You get a physical injury and you get an emotional

reaction. In almost all cases, the emotional reaction dies away long before the physical injury resolves itself. But in some cases, in an appreciable number of cases, it does not. Two years later, the person has still got the pain. He comes to court and says, "Judge, I've still got the pain I had before and it's no better and no worse."

Then the doctors get in the game. Doctor A says: "Oh, it is physical. It's just a long time resolving." Doctor B says: "No. By this time all his physical injuries are cured. This is mental." Then a third doctor comes along, who usually to me has the most credibility, saying: "It's part of both. Because of this man or woman's emotional reaction to what has happened, they have continuing injury which is physical and emotional."

I have no idea where it falls under the threshold. I have no idea, and if you read the words "physical in nature," that it cannot have any emotional component, I do not know. All I am seeing is a million lawsuits here.

I heard Mr Cheng, who this morning very much impressed me, but I thought, "What a different perspective he has." I think the chairman or somebody asked, "Well, can you allow premium adjustment if we go up or down on this?" And he said, "Well, we can go to the nature of the injury as described to us and we can categorize it."

It just is not that simple. The type of case I have in mind would be reported as, for example, a herniated disc in the low back, and that is physical. But what is really bothering the patient two years later is not entirely physical; an awful lot of it is mental. Perhaps I should say this: If, of course, the victim fails to satisfy any one of these requirements, the victim is out of court, and that is important. Of course, he may have spent an awful lot of money getting to court and then he finds he is out of court.

But if the purpose of the threshold, as I understood it to be, was to cut out minor claims that are being overcompensated and that are costing too much money, obviously the threshold is too tough. If you need any further evidence of that, there is no other jurisdiction anywhere that I have found, and I have done a lot of research, that has this tough a verbal threshold.

Further about the threshold, there is one section that seems so simple and sweet. Who could oppose it? Subsection 231a(3) says that a party can apply to a judge on a motion to determine whether the threshold is reached, and that is the effect of it. Now that decision is binding on the victim. If he is found not to reach the threshold, he is out. On the other hand, the

insurance company can repeat the motion virtually any number of times, and in practice, probably two or three times, whenever it felt like it, and there may be appeals in this process.

Of course, that is the only instance I know of in Canadian law where a losing party can relitigate the same question time after time. How does this in practice take place? I will be honest with you. I never knew until I sat in motions court as a judge how complex a procedure that is. Let me tell you in short form what happens.

1100

The insurance company brings this motion and it has filed affidavits of its medical experts that would lead to the inference that the threshold has not been reached. Now the victim really has to go for bust because he is in real trouble, so he files his own affidavit, an affidavit by his family doctor about how he was before. He is in a no-threshold situation. He has four or five specialists; you have to have affidavits by them all. This is a big job, but then every one of these people is going to be cross-examined before a court reporter. A reporter has to type that stuff, file it with the judge and then the judge has to hear the matter. He has to hear this with the same attention you give a trial because this is an all-or-nothing situation. So you are looking at two, three, four or five days of judge time. At this point, thousands of dollars have been spent to no real purpose.

If the victim is thrown out, it has served the purpose of saving him the further expense of going on, but this is an enormous hurdle that has been put in and does not now exist. I said earlier that I do not see any horns coming out of people, but this gives insurers, if so advised, the power to motion people to death. Finally, people either pack it in or take an inadequate settlement.

The nice guys I know on Queen's Bench would not do that, but some people out there are thinking about the bottom line. A great American judge, I wish I could remember his name, said that, "Power granted is seldom neglected." If the Legislature gives this power to insurers, it will be used. Some of you here are lawyers. You know what happens if you miss the limitation period by one day. They say: "It doesn't matter. We knew all about the claim." Power granted is seldom neglected. I urge you that when you get to clause-by-clause consideration, this paragraph should go. It is deceptive and terribly dangerous.

One fiat: There may be a situation where everybody would like to know, if the facts are not in dispute, whether it is the threshold or not. On consent the parties could go before a judge. I see

no problem in that, but it would have to be binding on both parties and not lead to endless litigation.

The Chair: Your Honour, I am going to have to interrupt you here and ask if you could sum up in the next minute or minute and a half, because I have two people who would like to ask questions or make some comments.

Hon Mr Barr: Mr Chair, you probably recall our conversation where I asked for half an hour and you indicated that I could have it. I think I could show—

The Chair: You have 15 minutes. Sorry, you are right, we have 15 minutes left. I apologize. We still have 15 minutes.

Hon Mr Barr: I will try and shorten it up anyway because I would really like to have questions. Given a captive audience, any lawyer or any ex-lawyer likes to hold forth.

I want to compare briefly what the Insurance Bureau of Canada asked Mr Justice Osborne for with what this bill has. This is what the IBC asked for. Obviously, it is something they thought they could make a living under.

A threshold permanent serious impairment is, under Bill 68, "permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature." The 1987 submission of the IBC said, "We will pay 90 per cent of gross income up to \$660 a week." Bill 68 has 80 per cent up to \$450. For unpaid homemakers it is \$200 versus \$185. I ask, why this change from what IBC wanted Justice Osborne to recommend in 1987-88? The only answer I have heard is, "Well, insurance results have been so bad since that that the industry can't afford it." I thought I would check, and the only place you can get these figures now—you cannot get them from Statistics Canada—is the IBC.

I inquired and they told me that in 1986, the last full year before Osborne, they lost \$333 million. In the first nine months of 1989, they lost \$63 million, an extraordinary drop. I was going to talk about what tort reform is going to do, but as you know, tort reform is somewhere in the mill which would enormously reduce the value of the claims. Professor Carr says a figure of \$838 million. Whether it is anywhere near that or not, the point is that, without putting any threshold in, it will transform the picture from a modest loss to a very substantial profit. I will come to that point later on.

Lost income: Bill 68, if passed, promises to make Ontario the only jurisdiction I know with a no-fault threshold that does not allow the victim to recover the actual proven loss. How adequate

is \$450? For January, last month, Statistics Canada reported the average Ontario family income—the figure is on page 6 and it may be worth looking at because it is hard to listen to figures—that the average family income in Ontario is \$52,764. So I asked my accountant, "Tell me, Ted, for a spouse, two dependent children, \$52,764; what is the after-tax?" He called back and said, "\$37,960."

Income under Bill 68 at \$23,400: There is a shortfall for the family earning the average Ontario income of \$14,560 a year. Now the law prohibits this family from claiming that from the drunken driver or from his insurance company. The suggestion is that he can buy extra insurance, but of course the extra insurance costs more money, which is against what you are trying to do in this thing. But more important, you have heard evidence about the fact a small businessman cannot afford this kind of coverage.

Quickly, if a small businessman has his appendix out or breaks an arm or something, he is back on the job in a couple of weeks, but with the kind of serious injuries that you face in so many automobile accident cases, he is off for a year.

I say this having given it a lot of consideration. If Bill 68 passes as now, some innocent victims will lose their homes and some innocent victims will lose their businesses. I am not talking about what is possible; I am talking about what I know will happen, having read this legislation. My daughter said last night: "For heaven's sake, do not try and argue a case. Just tell them." I should have paid more attention to her. I get a little wound up.

Legal costs: There is a lot of talk about legal costs. Professor Hutchinson, who hates lawyers for some reason, said 25 per cent. In the Osborne inquiry the figures are set out. They are researched very carefully, and 11 per cent average; 8.8 per cent of the claim cost in the serious cases is legal costs. You take 8.8 per cent of the 63 per cent of the dollar that goes into the payment of claims; 5.5 cents of the premium dollar goes for party and party costs. That is not the whole story, you know, but I have to keep things as simple as I can for lack of time.

But you can increase that figure substantially and say, "All right, supposing we are going to save on both sides of the fence 10 cents on the dollar." We are going to have this enormously expensive threshold litigation and there is going to be a lot more litigation over no-fault benefits. In spite of the provisions made to avoid that, it is simply going to be. Justice Osborne said the

savings under the proposed IBC plan would be "either no, or minimal savings."

Now, go quickly to "Dollars to the Victim." You have heard the figures in Dr Slater and his Ontario Task Force on Insurance that 80 per cent to 90 per cent goes to the victim under a no-fault plan. Justice Osborne said that is impossible and gave reasons why. But the most telling figure I can give you is the strictest no-fault jurisdiction in the United States is Michigan and its return two years ago was 55.1 cents of the premium dollar went to victims. There are no Ontario figures that I have been given, but from the Osborne report and the Slater report together—and I have the references in my brief here—we have paid 52 per cent to 55 per cent under the present system, so it is not materially different.

What can Ontario afford? The Attorney General (Mr Scott) was taxed recently about Bill 68 and he said, "Call it 'different,'" "worse," whatever word you want to use, but it is all Ontario can afford." I gave you the Ontario average family's income. Alberta is the next richest province, \$6,500 less than Ontario. Prince Edward Island and Newfoundland are the bottom at \$17,000 less than Ontario, but every common law jurisdiction in Canada can afford what Bill 68 is purporting to do away with.

About workers' compensation: You have heard the figures, unlimited rehabilitation, 90 per cent of lost earnings, and I am told now the present limit is \$738 a week, as opposed to \$450, and we can afford those things. In spite of these workers' compensation figures, I called Mr Kormos's office. I do not ordinarily get along with Mr Kormos, but I thought he is the one fellow close by. He was not in. His staff told me that there are three girls in the office—there is my daughter again, she will kill me—three women in the office. One works full-time on workers' compensation and two work half the time. There are an awful lot more motorists than there are workers covered by workers' compensation.

I would not want to be a member if this thing goes through in its present state. It is not my concern, but I think it is going to be pretty bad. Certainly anybody who has lost his home or her home or her business as a result of this is not going to go quietly and uncomplaining into that dark night. They are going to scream.

1110

Again, I feel the pressure of time, but I always wondered why insurers carried on in the automobile business when they were losing money. Of course, the probable answer, assuming their figures are accurate, is it is part of property and

casualty insurance. Stats Canada says in 1981 they had a very bad year. At the bottom of that so-called crisis, \$181 million is all they made. But the last four years property and casualty has made over \$1 billion profit in Canada after tax, which is \$40 profit for every man, woman and child. I am not criticizing that. I am simply saying this is not an industry that appears to me to be in peril.

On page 9 of my brief I have a number of comparisons between fault and no-fault. May I just say I find these surprising and I do not know why this should be. Quebec put in a no-fault plan. Their injury cases jumped 33 per cent the first year; seven per cent more people died. In New Zealand they have a much similar plan, which of course is in great difficulty now: 16 per cent a year increase in motor vehicle accidents. The United States Department of Transportation says no-fault states have 40 per cent higher premiums than fault states. There are real problems in here, reflecting long-term pain arising out of short-term gain.

Two things I want to conclude with that bother me very much. In the Law Times of 22 January the minister, Mr Elston, said, "The insurance companies have warned rates under the current system would rise by 35 to 45 per cent" under the present system "without this plan." Ron Kanter, three pages later in the same issue, referring to the eight per cent increase says, "This contrasts starkly with the 30 to 35 per cent increase that would be needed to maintain the"—present—"system."

The difference between 30 per cent and 45 per cent is over \$500 million. I cannot believe these are your business calculations. They are furnished presumably for the industry for some other reason.

A week ago a second thing bothered me and I called the Ontario Automobile Insurance Board and I said, "Please give me the results of the last three years' profit and loss on automobile insurance." I was referred to a very nice person who said, "We haven't got them." I said: "Of course you've got them. Your people monitor the insurance premiums." He replied: "No, we haven't got them. Call Mr So-and-so at IBC," and they gave me his name and his phone number. I really stopped and wondered, "Who is running the zoo?"

Mr Philip: You judges have always had a way with words.

Hon Mr Barr: I think I will leave what I have been saying. One columnist referred to the insurance companies as gloating over this plan.

Having watched this committee, and I have been before other legislative committees, I think you have shown enormous patience. The odd flare-up is just part of the thing that keeps people's blood going, but you have been very attentive and I know you are not going to rubber-stamp the thing.

I do ask you, do not do cosmetic work on it, because you will please nobody that way. I put in a number of suggestions, and let me just make this one for you: You do not have to introduce this thing as a whole bundle. The tort law reform is going to reduce enormously the claims cost, reduce prejudgement interest that now accounts for 11 per cent of the claims dollar. It is going to go down to two and a half per cent from about the present 11 per cent. So it is going to be about a quarter of what it is now. Collateral benefits are going to have to come in. There are a number of improvements of this nature which will transform the claimed loss of \$63 million for nine months into a profit.

Why not wait and see? Under the new act you have a power that did not exist before, and that is the power to check these figures yourselves. Why not do that for yourselves and then let the other things go? If you do get a threshold—I propose one at page 12 which I think would be workable and would be palatable probably to all concerned. Sorry I have taken so long, Mr Chairman.

The Chair: Your Honour, we have approximately two minutes left. I will allow one minute to Mr Kormos, one minute to Ms Oddie Munro to either question or make a comment.

Hon Mr Barr: No, Mr Kormos and then Ms Oddie Munro. He may surprise you today.

Mr Philip: But this time you cannot find him in contempt.

Mr Kormos: That is right. We have agreed on the rare acquittal.

Hon Mr Barr: Mr Kormos, you were very lucky.

Mr Kormos: You talk about fault being almost never an issue in court and easily determined. That leaves the impression that civil courts spend the biggest chunk of their time determining quantum of damages. Can you talk about that a little bit, please?

Hon Mr Barr: Almost always that is the big issue. Occasionally the defence will not admit liability because there are policy limit problems or simply because they want to leave the sword hanging over the plaintiff's head, but I cannot recall any case in which I found fault a problem. I

preferred, personally, to try cases with juries. I thought they were very good at finding fault. They occasionally came to a different conclusion than I did, but there was never any big problem about it. They would be out for Lord knows how long, quarrelling about what is fair as far as compensation is concerned.

The Chair: Before I go to Ms Oddie Munro, I have Mr Ferraro on either a question or a point of clarification.

Mr Ferraro: It is a clarification, if I may, Mr Chairman.

Your Honour, for clarification purposes, the actuarial studies showed the range of premium requirement deficiency, if you will, from 29 per cent to 44 per cent. The government took 30 to 35 per cent because it is not an exact science when you are dealing with actuarial reports.

The second thing I would like to point out is, sir, on page 8, your workmen's compensation calculation figures are wrong from this standpoint: It is 90 per cent of net income. Our calculation is based on 80 per cent of gross. I acknowledge, sir, that the Workers' Compensation Board of Ontario formula is a little higher.

Finally, perhaps more importantly, on page 6, where you use the adequacy of the \$450, you quoted Statistics Canada and, I am sure, rightly so, the average family income of \$52,764. Then you brought it down, after income tax, to \$37,960. Our figure of \$450 works out to approximately \$30,000, based on an individual's income, your Honour. In the province of Ontario the average industrial wage is \$25,088. Our figure of approximately \$30,000, because the \$450 is a net figure, would compensate 70.8 per cent of all the workers in the province of Ontario. You used the family average, sir. We use an individual.

Hon Mr Barr: I was using figures which were readily available to me. The problem I tried with other figures was that I could not seem to get anything that was representative. You say the median income is around \$30,000, I guess.

Mr Ferraro: For an individual worker.

Hon Mr Barr: An individual worker.

Mr Ferraro: You used the family.

The Chair: Ms Oddie Munro for a minute.

Hon Mr Barr: If I can just follow that one point just one step further, I asked the accountant. I said: "Give me the figures for a \$32,000 wage earner, and \$20,000. Just give me what happens when the lower earning person is disabled." In this world of unequal reward, let's assume that is the wife. If she is disabled, she is

earning \$20,000 a year. She gets \$16,000 under this.

Mr Ferraro: No, sir. If she is disabled, she will get full compensation because she will have access to tort.

Hon Mr Barr: No, no, no.

Mr Ferraro: I guess it depends on the definition of disabled.

Hon Mr Barr: No, people will be disabled under this threshold for years and not qualify. "Permanent" is a long time, Mr Ferraro.

Mr Ferraro: You are talking about if indeed they do not pass the threshold.

Hon Mr Barr: That is 99 per cent or 98 per cent of the people, yes.

Mr Ferraro: Fair enough.

Hon Mr Barr: Assuming that, then she gets \$16,000, and her after-tax income, with her husband earning \$32,000, is \$19,300. The family is short \$3,300. We can do better than that, I am sure.

Mr Ferraro: I do not want to take the committee's time, save and except, sir, if the injured person and/or a spouse or a dependant of either of the two, whether they were in the car or not, suffer a loss of income, they are eligible for 80 per cent of the gross income. It is then payable to a maximum of \$450, forgetting the top-up portion. That, sir, without any deductions, is the equivalent of approximately \$30,000 in the province of Ontario for both.

The Chair: Individually.

Mr Ferraro: Individually. So if you had two, essentially, and they were both making \$30,000, they would each get \$30,000.

1120

Hon Mr Barr: I will bow to your superior study.

Mr Ferraro: Only in this area.

Hon Mr Barr: I did not think anybody could catch me this morning, but you did.

The Chair: Miss Oddie Munro for a minute.

Ms Oddie Munro: I guess when I take a look at your questions relating to the threshold on page 2, it makes me feel that probably the judiciary is able to make decisions on what that threshold could or would be notwithstanding all the pressures. Just the body of knowledge that would flow out of your questions would seem to me to be something that you could draw on with enough certainty that your decision, which was above and beyond that, would be a good one.

I do not know how you establish precedents and I do not know how you establish bodies of evidence in law, but is this not the process that you would go through in any instance when you are looking at a case before you? Are these not important questions that you yourself have come up with?

I take a look at your suggestions for a threshold on page 12, and I would have thought you would have wanted to remove "permanent."

Hon Mr Barr: "Serious or permanent" was my suggestion.

May I ask you a question? There are two types of things. For example, if you are saying, "Well, is the sense of smell a bodily function?" that could go to the Supreme Court of Canada and it can say yes and that is determined then for all time. But in applying the permanent disability to Mrs X, you have to go into particular facts of her case, and you can litigate that and all you can determine is that in her case, yes, she is over the threshold or, no, she is not. That is the type of thing that concerns me and is perhaps the best illustration of this physical nature thing, because every case is different. Now, all these cases can be litigated at enormous expense and there are so many qualifications.

We have six qualifications in here that the victim has to meet. I foresee an enormous amount of litigation there, because what happens to me in an accident, what happens to Joe Zotes in an accident are two different things, even though he may apparently have the same injury.

The Chair: I am going to have to interject there and thank you very much for your presentation.

Hon Mr Barr: I enjoyed it and I will have to tell my daughter that I could not keep cool like she said I should.

Mr Philip: And that you and Kormos agreed.

The Chair: Mr Hill, the clerk has distributed copies of your brief. You have 15 minutes. If in that time you would allow us some time for questions, comments and discussion, I would appreciate that and the committee would appreciate that. So if you would identify yourself and please proceed, the next 15 minutes are yours.

R. G. F. HILL

Mr Hill: We are not going to get through these then?

The Chair: Not in your 15 minutes.

Mr Sola: Unless you are a speed reader.

Mr Hill: I want to thank you for granting me the privilege of presenting my concerns on Bill

68 and no-fault insurance. The gods do smile kindly sometimes, even on us auto drivers. Two weeks ago I was told that the date had passed for such an auspicious occurrence, but here I am. So anything is possible, and who knows what may happen before Bill 68 is approved by the Legislature?

My name is Fred Hill and I am a senior citizen, supposedly retired. Last spring, from mid-April through May, I attended the Ontario Automobile Insurance Board hearings. As you may have observed, I have attended a few of your meetings on auto insurance here in this building. From what I have learned, I am overwhelmed at the seeming unlimited power of the auto insurance industry. I am just overpowered by all of it.

I have worked hard all my life for what little I have now. Five years out of my life were spent overseas, two of those in the front lines, fighting for one freedom that may now be in jeopardy if this legislation is not changed. Though not as spry as I was 30 or 40 years ago, I am in relatively good health and as long as I am, I intend to keep on driving my car.

If I can prevent it, I have no intention of submitting to a situation in which I can be deprived of that privilege on the momentary whim of an auto insurance president or by the stroke of a claim adjuster's pen. These are things that just scare me with this legislation.

I ask you, why should the auto insurance industry control, in part, the quality of my life? I can see nothing in this legislation to protect me from such a distasteful and disastrous situation.

Given the past practices of auto insurance companies, where else can my protection lie but in your hands? I implore you to recommend to the government of Ontario the establishment of a regulatory body with sufficient power to counteract the unmitigated power of the insurance industry. I urge you to press hard on your colleagues for the creation of such a body.

To assist those who would protect me, if you look in my brief on page 2, I have proposed a universal driver risk classification. If adopted, such a system could be used effectively to control and eliminate some of the unpopular practices of auto insurance firms. We will come back to that one a bit later if we have time.

On page 6, I have developed a case for seniors and female drivers to get auto insurance premiums at preferred rates. Evidence has proven that seniors have proportionally fewer accidents than do younger drivers and that the severity of those accidents results in much lower claims and the

authority for that comes right out of Mr Osborne's report.

In addition, certain benefits such as wage-loss benefits may not be available to seniors. Therefore, if they are paying for benefits that they are not entitled to, there should be some consideration in the premiums for that.

To illustrate the untrammelled power exerted by the auto insurance industry on drivers, I have briefly outlined a few documented cases in which actions of the auto insurance firms were not what we would expect from good corporate citizens. That is on page 9.

We slip over to page 11. The auto insurance industry has not convinced many of us—and we heard some cases this morning on this—that it is impoverished and therefore needs significant hikes in premiums. Simple data for simple folks on costs and returns of the auto industry are nonexistent. We heard people talking about that this morning. Dr Barr just mentioned that.

In the section headed "Insurance Premiums and Corporate Welfare," I used data from Osborne's report and a few simplified calculations. I believe that on the average a premium of \$600 per year per licensed driver could probably provide a very adequate level of profit. Under one scenario, those profits might approximate an average of \$110 million each year for each company. I do not know what you think \$110 million is but if we had it all piled in here in \$20 bills it would come up pretty high.

Where are the data that say I am wrong? Where are the data that say this is not close to reality? If you want to really follow the very simple calculations I did in arriving at that figure, they are outlined there.

Listening to the briefs presented by others, I am convinced there is a lot of confusion about this proposed no-fault legislation. Seeking enlightenment, I ask two specific but simple questions.

1. What procedures or standards will be used to determine the level of auto insurance premiums which I must pay under this proposed legislation?

2. Under this proposed no-fault system, if I have an accident, is there any difference in the amount of benefits I would receive if I were at fault or not at fault?

1130

Those are two questions. To me, they are very simple, but believe it or not, I got two different answers to both questions. One set of answers I got was from a member of this committee, and

another set was from a person who is quite prominent in the insurance field.

How can we drivers know if you experts do not know what the situation is here, and then, in turn, how can we support this legislation if we really do not know what it implies? Those are two very basic, very simple questions and I am getting different answers.

I have kind of gone over some of the other problems that have been raised by other groups. Confusion also reigns over the medical terminology used in the bill. On the last page, under the heading "Negotiated Employee Sick Leave Benefits to be Eroded," I have touched on the resentment expressed by employee groups over using up accumulated sick benefits before the insurance company will contribute to an employee's welfare if hurt in an auto accident. In other words, there is a lot of unrest out there about this aspect of the proposals.

How many more minutes have I got?

The Chair: Approximately eight. If you want some interaction with the committee, you have to leave some of that time as well.

Mr Hill: Yes. This is a very simplified, schematic idea that I have about driver risk classification. I just wondered if we just might go through it a bit.

The proposed universal driver risk classification, which could be used for protection, is based on a point system. Drivers would be rated for risk and categorized according to a predetermined point system. The lower the number of risk points against a driver, the lower the risk category and the lower the premiums. A careful selection of criteria would be paramount to ensure fairness, not only for the drivers but also for the auto insurance companies. You would have to be awfully careful in deciding what criteria those are.

Over on page 3, there is a sort of schematic drawing of what I am trying to get at there. You can see on the left-hand side an area, "Below-Average Premiums, Average Premiums and Above-Average Premiums." Each category would contain a range of points and within that category there would be a specific range of premiums. No company could raise the premium of an individual driver beyond the range in that category until the driver breached the threshold into the next highest classification. Similarly, the insurance company could continue to charge him premiums at the levels within the category until the driver lost sufficient risk points to drop to a lower classification.

The gentleman to whom I spoke was kind of prominent in the insurance industry and, while he did not come out and say there was going to be actually a driver risk classification, he sort of implied that there would be in determining what my level of premiums might be. There may be something in the works that I am not aware of, but I am just throwing this out to emphasize it.

The Chair: It is my understanding that the current classification system for classifying drivers remains unchanged so that either the system similar to what you propose in terms of number of miles that are driven, your age, the location, whether you are driving the vehicle for pleasure or for business, all of the rate classifications that are currently in place—and they may vary from company to company, whether you are an abstainer, etc—stay in place. They are not impacted by this legislation. That is my understanding.

I know at one time they were looking at a review of the rate classification system. That has been either scrapped or put on hold as of this date, so the classification system remains the same. If you are a good driver, your rates will be a lot less than the 90-miles-an-hour drunk driver of a Jag that we keep using all the time. If we could ever find that individual, the roads would be a lot safer. That is my understanding of it. The classification system does not change under this legislation.

Mr Hill: I think what certainly concerns me is that you have a classification, but who is going to ensure that it is adhered to?

The Chair: Again, my understanding is it will be the insurance commission that is created either under this legislation or a companion piece of legislation.

Mr Hill: So if an insurance company wants to say, "Okay, I'm going to double your premium or I am going to declare you uninsurable," it can do that; it does not have to answer to anybody.

The Chair: No. They would have to file that notice of rate increase as part of an annual filing.

Mr Hill: I am raising questions that we drivers are concerned about.

Mr Ferraro: You are raising good questions.

Mr Hill: As I mentioned in another brief, I am not interested in knocking any insurance company out of business but, by God, at the same time I do not want to be knocked out of business myself.

Mr Ferraro: You are raising good questions, and for the vast majority of Ontarians this is very difficult, I can tell you, to try to get a message

across. To answer your question specifically, if an insurance company said to you, "Mr Hill, we're going to double your rates," technically it could say that, at least on the face of it, but every insurance company has to file its rate classifications with the Ontario Insurance Commission. The insurance commission has to approve or deny any and all increases. If they have doubled your rates, they would have had to double them for a specific reason. I quite frankly cannot see them doubling the rate unless you were the worst driver the world has ever seen and got drunk every time you got behind the wheel.

Without hypothesizing, if indeed you feel that you are being treated unfairly in any way, shape or form, you then have the option of bringing that to the attention of the commission, and indeed the commissioner will investigate that specific case and report back.

Mr Hill: There is one point I would like to make with reference to this. On page 9 of my little brief here, I refer to Donald Lyon, who with two minor not-at-fault claims was declared uninsurable. After 23 years of claim-free driving, his premiums increased from \$860 to \$3,223. This took up a half page in the Toronto Sun last March. There is a man there who for 23 years has claim-free driving, he gets into two little bits of accidents and, suddenly, he is declared uninsurable. Where the hell does that man turn? Where do I turn if that hits me? There is where I do not understand how this system you have suggested is going to operate.

Mr Ferraro: I can respond briefly. I do not know the full circumstances, but I agree with you that it sounds absolutely outrageous. To answer your question as to where you turn, once the legislation is passed you could go to the commission or indeed you could go to the superintendent of insurance now, but at the very least, if you were my constituent you could go to the particular MPP or any MPP for that matter and have it investigated because something sounds seriously wrong.

The Chair: Mr Hill, thank you very much for your presentation. It has been very useful, as have some of the straightforward questions you asked.

Mr Hill: Thanks for giving me the opportunity.

Mr Philip: If you enjoyed wage and price controls under the federal Liberal government, you will really love this rate classification system, I am sure.

Mr Kormos: By the way, there is a lot of good reading in that book there. The *Merchants of Fear*, by James Fleming, opens a lot of windows on the insurance industry.

The Chair: Mr Dorrance, the clerk has distributed copies of your presentation. We have 15 minutes. You have seen the proceedings. If you could save some time either for some interaction or questions and comments by the committee, we would appreciate that. Identify yourself for Hansard and then please proceed.

1140

DAVID DORRANCE

Mr Dorrance: I want to thank the ladies and gentlemen of the committee for hearing what I have to say. I have been a licensed life insurance agent for 29 years, and I am a licensed registered insurance broker. My profession is that of insurance sales.

On 8 March 1985, my vehicle was struck by an at-fault driver. I did not have any broken bones, nor did I have any permanent loss of bodily function, and sometimes I wonder I was not killed. I have what is called a soft-tissue injury, or whiplash.

At the time of the accident, I was a significant shareholder in a closely held corporation, my corporation. Income of the company was dependent upon the results of my work activities and my facilities. I had to work in spite of my problems and I had to struggle to keep the company going. This company was the development of all my knowledge and experience, having worked in my industry for the previous 25 years. Because of this accident I had to endure and adjust my life and that of my family to some of the following: severe and prolonged pain, which I still have to date; dizziness; severe and prolonged headaches; heart palpitations; personality changes—that is usually caused by pain; loss of sense of worth and self-esteem; and stress in all forms—financial, business, physical and mental.

I have also had long-term medical treatment, which includes some of the following: almost five years of physiotherapy—I still go twice a week—three years of chiropractic treatment; neurosurgery; one year of weekly and at times biweekly pain injections, two of them, to the back of the head. The first one hurts like hell and with the next one you know what is going to happen. These are known as pain blocks. They work for a day or two. Treatment also includes ongoing pain management at this time by a psychiatrist who deals in these matters; I take 100

milligrams a day of amitriptyline, and I use 292s frequently.

I would like to point out one of the interesting things. About seven months after the accident I had a 15-minute visit with an orthopaedic doctor who said my condition was not severe and it was not prolonged.

I experienced long-term business losses as well. I was 50 per cent or less effective in what I was doing, my corporation lost profits, I lost personal income, I lost clients, I lost my ability to be constructively, consistently productive. I ended up selling my business because I could not produce the necessary result.

I experienced family problems, some of which I heard the doctors address today. By my understanding, when I married my lady, she was to remain at home with the children, so I worked the extra hours to make the money that sometimes a lady makes to keep the family at home. She had to get employment after 22 years of being my wife at home with our children. I did not earn enough to provide for my family in the way that it was accustomed to living. I earned less money. Anger, which was caused by continuous pain, frustration, stress, depression, have changed our family relationships for ever. They will never be back where they were. There are other things that happened that I think can belabour this point, and I would just as soon pass on them.

If I had to prove my claim under the proposed bill, and this is what frightens me, for no-fault insurance, I would not qualify for anything other than the medical treatments. First, I would not qualify for the threshold, because the doctor said the injury was not severe and prolonged, and I could not sue because I did not qualify under the terms of that threshold, and of course I was not dead so that solved that problem. Second, I would not qualify for weekly income, because I drew money from my company and I had the facility to draw money from my company. That amount would have been deducted from the weekly amount.

The first offer of settlement that I got was \$10,000, and it was kind of "Take it or leave it," in a very sarcastic and bad tone. The second offer, just before trial, was a flat \$50,000 after a pre-trial judge had indicated my injuries were ongoing and suggested that \$150,000 was a fair and reasonable settlement under the circumstances. After my trial, because I went to trial, a district court found that I should be awarded the following: \$40,000 for general damages, \$15,000 for future loss of income and \$25,000

for loss of corporate profit. I was awarded interest on the awards. I was also given an amount for physiotherapy and a portion of my legal fees.

Having the opportunity to go to court at least gave me some hope. It allowed me to believe that I and my company would be fairly compensated. Knowing this caused me to endure and not to give up. When you are in pain all the time and you watch your dreams and your aspirations slipping away, it is pretty darned easy to quit. Being able to go to court to be heard and to receive a judgement was the thing that caused me to carry on. Without it, I do not think I would be here today.

I knew that however long it took and however difficult it became, my government allowed me the privilege to be heard in a court of law. I believed that a court would be fair and impartial, and I still believe that is our system, and a judgement would settle the matter once and for always. If I was entitled to compensation, they would say so and if not, they would say so, but I would not be browbeaten into accepting only a portion of what was fair under the circumstances.

I would like to know why my government wants to deprive me of the opportunity to be heard in a court of law. I believe it is simply not the standard of the quality and responsibility of my government to allow 90 per cent—that is the government-published figure—or greater of all innocent accident victims to be financially compromised. It is simply not right. It is not a good and responsible government that would take away the right of a common, hardworking guy like me to be heard and judged in a court of law. I do not know why you are even considering it.

If this bill becomes law, at least 90 per cent of all innocent victims will be further victimized. They will be victimized by the very government they support and elect. This further victimization will cause most of them never to recover economically, and our government will then have to be responsible for them economically. The victims will then lose the opportunity to get back their sense of worth and to provide for themselves and their loved ones.

I am against this bill and no-fault insurance as it is presently being proposed. I believe that all innocent accident victims should at the very least be made whole economically; that all innocent accident victims should not have to be subjected to specified means tests before they can get a just and a fair hearing in a court of law; that having recourse to a court of law is fundamental to

our system and a right that should never be taken away. Murderers, rapists, child molesters, thieves, drug dealers, war criminals are all heard in court, so why refuse the same opportunity to innocent victims of motor vehicle accidents?

I would like to know how the elected members of my government feel they can condone this action to restrict my right to my day in court. I do not believe the individual members of my Parliament would knowingly and irresponsibly agree with the threshold elements of this bill, which I do not believe is in the best interests of any person in Ontario. Anyone who becomes an innocent accident victim of an automobile accident, there but for the grace of God go you and I. I would not wish what happened to me on any one of you. You have a very important task, and I do pray that the good Lord help you in your deliberations. Thank you for hearing my opinion and for your every consideration.

The Vice-Chair: Thank you very much, Mr Dorrance. I have Mr Ferraro on a point of clarification.

Mr Ferraro: On page 2, you indicate your situation under the proposed bill. Your second assertion is, "I would not qualify for the weekly income because I drew money from my company and that amount would have been deducted from the \$450 weekly." Could you clarify that a little bit for me?

Mr Dorrance: My understanding is that any benefit other than unemployment insurance which one receives or has income from is reduced from the amount that is awarded weekly.

Mr Ferraro: No. If you were getting an income, whatever the amount and you were no longer able to get that income as a result of the accident, the no-fault benefit entitles you to 80 per cent of your gross income to a maximum of \$450. There is also the top-up provision. For example, if you were getting \$1,000 a week, hypothetically, and you had some other income replacement, let's say 60 per cent, you would then be applying the 80 per cent figure to the \$1,000, so that would be \$800 you would be eligible for. Your income disability insurance would kick in first. That is what they call the collateral source rule.

1150

Mr Dorrance: Yes.

Mr Ferraro: So you would have \$600 from that private insurer, and in that instance the government plan would kick in an additional \$200. I guess the point I am trying to make to you, after having heard the clarification, is that

you would qualify for income replacement without question.

Mr Dorrance: Or for a portion thereof if I qualified under formula.

Mr Ferraro: If you qualified for more than—

Mr Dorrance: Whatever is there. In short, I am not going to get more than that I earned—

Mr Ferraro: You either get 80 per cent of your gross to a maximum of \$450, which is net of any deductions, or you get whatever the amount is up to a maximum of 80 per cent, bearing in mind your private insurance income replacement.

Mr Dorrance: That is a good point. I just want to say one thing about that. At the time this was going on, I was developing a corporation and taking a small income from the corporation, because I had to hire staff, buy computers and do all the things that you do when you develop a business. You are aware of them. The 80 per cent may not have been \$450. I do not know. I know I drew just enough to get by. I drew \$19,000 the year after the accident. That was my annual income. I was used to \$60,000 and \$70,000. It was quite a change.

Mr Ferraro: I understand.

Mr Philip: The Ottawa-Carleton Board of Trade made a fairly impassioned plea yesterday when the committee was in Ottawa about the economic loss that entrepreneurs and business people like yourself will suffer under this legislation. Your personal story has helped to illustrate what has happened in a specific case and what would happen.

My question is this: We had just a fascinating, interesting brief this morning by a retired justice, Judge John Roderick Barr, and he talked about the difficulties of proving the threshold and of defining the threshold. I ask you, in your own case, if this bill had been passed at the time you had your accident, would you have made that threshold?

Mr Dorrance: No, and I will tell you why. In the first case, I had an orthopaedic surgeon seven months after my accident who gave me a whole 15 minutes, looked at some X-rays and said I was not severe and prolonged. The threshold says a number of points: "An impairment of a bodily function"—heck, I had them all. "Impairment must be permanent." You know, permanent is a long time. I have five years behind me. I am 50 years of age. I can probably make, say, 75. The good Lord gave me what he gave me.

But you see I am still getting around. I drove in from London this morning. It was a little painful,

but I drove in. "Impairment must be serious." Well, what is the definition of "serious?" I consider myself serious. Many doctors did not. "The bodily function must be an important one." Good Lord, I have lost a lot of bodily functions, but I do not know if they are important or not.

"The injury causing the impairment must be a continuing one." I qualify there. "The injury must be physical but not mental or psychological." I went through both, including a very good attempt at suicide, because when you have pain and headaches that cause you to throw up for 10 days in a row and you get two hours' rest and go back for five more days, you do not want to live very long.

These are the factors. This thing really throws me. I do not mean to insult anybody and I hope I have not offended anybody, but I think this is ridiculous. I think that our right to go to court, to be heard—you know, you can lose in court. You lose everything then. You have to pay the other guy's costs. I went through three discoveries. My wife went through them. My children went through them. They were embarrassed in court. They were hassled by a defence lawyer, an extremely good one, by the way. If I ever commit a murder, I will hire him. But the bottom line with it all is that you have to go through chartered accountants, medical reports. The costs just for doing this are frightening.

Mr Philip: Under this bill you would have to go to court in order to prove that you had the right to go to court.

Mr Dorrance: Oh, yes.

Mr Philip: So whatever you went through before, you would go through twice.

Mr Dorrance: Yes, and what it does to your family is frightening. I had a kid quit college.

Ms Oddie Munro: We certainly have heard from a lot of witnesses speaking to amendments or clarification on the threshold. What would your amendments be? You spent considerable time talking about permanent. I understand that—

Mr Dorrance: I would throw the threshold out. I would just suggest that if a person has the ability or wishes to or chooses to be heard in a court of law, that person would then be heard. Taking that away—threshold nothing. I would throw that out. I think no-fault is a darned good thing. I am in this business. I will have been in it for 30 years in May. Quite frankly, no-fault is an excellent thing, but to cause a person not to be able to go to court or to have to pay a pile of money just for the privilege of knowing whether he can or not, that is disturbing.

Ms Oddie Munro: Do you think the court, however that happens, would be creating its own working definitions that would closely resemble threshold, or is that a guesstimate?

Mr Dorrance: I could not answer that. They are so complex.

Ms Oddie Munro: Yes. Thank you. I appreciate your comments.

The Vice-Chair: Thank you very much, Mr Dorrance, for your presentation this morning.

Mr Dorrance: Thank you again.

The Vice-Chair: Is Anita Ling here? Ms Ling, the brief that you have given to us has been presented to the members. You have a total of 15 minutes and I would suggest that you try to save a small portion of that so that you may answer questions.

ANITA LING

Ms Ling: First off, I would like to begin by thanking the members of the committee for giving me this opportunity to speak this morning. My name is Anita Ling and I am from London, Ontario. I work at a psychiatric assessment centre for the government and I have been there for approximately 18 years.

I have several points this morning that concern me, the first one being in terms of the wage loss. I am very fortunate working for the government and in the position that I hold, I have a very good sick benefit. I am very well compensated in terms of the sick time that I can accumulate and the sick time that I can use at my discretion.

Under the proposed legislation, I am aware that I will have to exhaust that sick time having an accident rather than being able to be compensated for it and I think that is very unfair. I was involved in a motor vehicle accident on 23 April 1986. I was an innocent victim. I was travelling south towards a squash club on a two-lane highway and a lady in the lane beside me made an incorrect left turn and pulled out in front of me, resulting in totalling my car and causing me severe whiplash damage and back and neck and arm injuries.

I was off for approximately three weeks at that time. I returned to work in a great deal of pain. Initially, right from the very start, from the very next morning, I had severe pain in both my arms. It started in my right arm and then went over to my left side. My back was in excruciating pain for quite some time, and as I continued at work, I realized there was less and less I was able to do.

I do a lot of medical reports and attend a lot of conferences. I had extreme difficulty sitting,

sitting for conferences or being able to do any writing. I was very fortunate that I have great co-workers who were able to carry on and do for me what I could not do. There were times that I could not write. There were times when I got home, I could not even cook because I was not able to use my hands. I am left-handed and so writing was very, very difficult as the pain continued.

I ended up having carpal tunnel surgery in my left arm. This past summer I have had several nerve blocks and an entire summer of really painful treatments, and now I am at the point where they have told me that there is nothing else that will be able to be done for me. This deprived me of a lot of things, the first being I was an avid squash player. I was very athletic. When I was hurt, I was in excellent physical condition. I would have probably sustained much more injuries had I not been in the shape that I was in. I have been deprived since that day of ever being able to play squash.

My job is a very stressful job. I work with delinquent adolescent children and I have to be really on top of it all the time, and when I leave work, I leave it behind me. I played squash five to six times a week. It was an incredible outlet for me. I have been playing squash for approximately 12 to 14 years. I have never played squash since the day that accident happened and I resent that. I resent what that woman did to me and what I have been deprived of.

1200

My injury, under the new legislation, is not considered permanent. Nobody can tell me when I walk into a squash club that the fact I cannot play any more is not permanent.

I have been very blessed with some great specialists who really took an interest in my case in the London area. I am very fortunate, probably, that I do live there because of our medical facility and I feel the help I had was just the best I could obtain.

The doctor, the sports specialist, this past summer finally said that I have to accept that I will not play squash. I continue to work because I am very determined. I am not someone who can sit and knit or sit and do things. I am extremely physically active and I continue to work because of that.

I had a very difficult time accepting that I could not do it. I have always been the type of person who if someone says, "Try this," I am the first one to do it. I was an avid downhill and cross-country skier. I no longer can do that.

I also lost only, initially, three weeks of work. Subsequently I have been hospitalized three times, each for a period of three or four weeks. Altogether I have probably only lost 15 or 16 weeks of work. That is easy to sum up and state it in print, but nobody can understand what I have gone through in the last four years. I live alone and I am solely dependent on myself. I have no one else if my job ceases to be there.

It is a government facility and we have been told that they are closing facilities constantly. If I was in the position to have to be re-employed, even though I have an excellent record at work and everyone at work feels I have done a great job, if there was a position that there were three openings and I was one of the people to be able to apply, because of the injuries I have had, because of the back problems that I constantly have, I know that I would be swept aside, for whatever reasons they would give me.

In my job, it is very physical at times. I deal with adolescents who can become very violent. We are an assessment centre where the courts refer the children to us. They come in with very hostile attitudes, very rebellious. Many times I am in the position that I have to physically restrain them. Physically restraining a 17- or 18-year-old who has been brought in by two or three police officers is totally something I cannot do any more. I have great co-workers who sort of say, "Step aside, we will do it." I am very fortunate like that but in terms of being compensated that is not something in my favour.

Also, I feel that under the new legislation my case will not meet the threshold criteria. I think that very unfair. No one can physically see that there is anything wrong with me. People who work with me and know me, know on a daily basis that I am constantly in pain. I find it very humorous when some people come in from work, if they have been playing hockey or slipped on the ice and they come in and say: "Oh, boy, my back is very painful. I slipped last night. Is it ever sore." I think that if you amplify that three times you know what I am going through every day. I have had to learn in the last four years that I have to get one step farther than that. I have to be really positive.

In my second bout in hospital I suffered extreme depression. The pain was just more than I could bear. Luckily I had a girl in the bed beside me who had suffered a back injury as well. We were very supportive of one another. She is a medical nurse who no longer has a job as well. We realized that we had to go one step beyond that and be very positive. So when I am in pain

now, I sort of laugh about it and I think my physio people and everyone feel that is a real asset.

I just find that under the present proposed bill people such as myself who suffer whiplash damages and back injuries, something that people cannot visually see every day, have no concept of what we are going through. There are so many out there like us.

We do not want to be compensated, or I do not want to be compensated with large amounts of money. All I want back is what I was deprived of on 23 April 1986. I want back what I lost out on. I want back the fact that I want to be able to play squash again. I want to be able to do the things I used to do.

The day I had the accident I had a German shepherd with me. I do a lot of intensive dog training. I also lecture in the school systems all across Ontario. I have been out west with my dog. He was badly injured and sustained at least \$500 damage. Luckily I am being compensated for that. If my dog had been killed, my business that I do on my own would have been gone and I resent the fact that I no longer can train. I have come to shows here in Toronto and all across Ontario and I am so limited in what I can do. Fortunately I have great trainer friends who, during the time I had arm and hand damage, took over for me and did for me what I could not do.

Ultimately, my goal was to begin kennels in terms of training, doing dog obedience and helping people with severe behaviour problems dealing with large dogs. There is no way I can ever do that because it calls for such a great amount of physical strength and I no longer have that in either of my arms.

The Vice-Chair: If I may interrupt, very briefly, I have two questioners already and there is only four minutes in total remaining.

Mrs Ling: All right.

In closing, I would like to say that I have here approximately 1,400 signatures that I and a group of Londoners, who are accident victims, obtained from two local malls and I obtained from a Toronto dog show. I would like to be able to give these copies to the committee. The originals will be presented to the Premier in his home riding in London, if I could have the opportunity to give these to you.

I also thank you very much for the opportunity of letting me be able to speak this morning.

Mr Philip: I will ask my question, my supplementary and my third supplementary all in one. In democratic societies we are not allowed to confiscate property without compensation, and we had the incident where the previous

Conservative government tried to do that to people in Pickering and indeed the Ombudsman stepped in and dealt with it. In more totalitarian societies we have seen land grabs in northern Ireland by English kings who gave land to friends, and in Latin America and in Communist countries.

Under your particular experience you lost 16 weeks of work, which I assume would have been covered under your sick benefits but under a court of law would eventually be rebated to you. Under this bill it would not be rebated. You in fact would have to use up those 16 weeks of sick benefits.

Do you consider this bill a confiscation of your property?

Mrs Ling: I definitely do, because I feel that what I have earned at work in terms of sick time is there to protect me. For instance, if I had had to use up all my sick time and four months down the road got very ill, I would not be compensated. I would have nothing to back me up. Having nobody else to support me, I would resent the fact that I used up all my sick time during an accident that I had no bearing on, that I had nothing to be able to protect me from and was a totally innocent victim. I resent the government taking that right away from me and leaving me.

If I had to change and be able to go back to that day, there is no amount of money that can compensate me. I guess the only blessing I have by having this accident is having it when I did, because if I had it after this bill had been passed I would have nothing to stand on and I resent that.

Ms Oddie Munro: Thank you very much for appearing before the committee. On page 2 you take a look at the benefits that would accrue to the driver who is at fault, but I wonder how you would comment on the deterrent aspect of the plan. For example, the driver would still be charged. There would probably be increased rates, or certainly be increased rates: drunk driving; then the licence would be withheld.

I understand too that what you are saying is that the biggest deterrent is your right to go to court. I understand that, but how do you view the deterrent aspect or the fault aspect of the bill?

Mrs Ling: In terms of the other party?

Ms Oddie Munro: The stricter regulations, rules, I guess, actions against the driver who was at fault.

Mrs Ling: Nothing has changed in terms of the fact that drunk drivers are going to be penalized. I do not have any problem with that. It is just that my rights are going to be taken away and that is what I resent. I do not think the other party should have to suffer any more or should be at any loss, but I feel that nobody should take away something that was already my right. I resent the fact that I will have to pay more for something I do not even have now.

The Vice-Chair: Thank you very much for your presentation. That concludes the presentations for this morning.

The committee recessed at 1211.

AFTERNOON SITTING

The committee resumed at 1400 in room 151.

The Chair: I am going to recognize a quorum and welcome to the committee the Anglo Canada General Insurance Co. Would you identify yourself for the benefit of Hansard as well as the television audience. We have half an hour. If you could leave some time for some questions, comments and discussion, we would appreciate that as well. Please proceed.

ANGLO CANADA GENERAL
INSURANCE CO

Mr Walpole: My name is Noel Walpole. I am the president of the Anglo Canada General Insurance Co, based in London, Ontario. I would also like to take this opportunity to introduce Mary Franks of Brampton, Ontario, who is one of our policyholders and the mother of a seriously injured 21-year-old.

Before I start my presentation, I would like to thank the committee for this opportunity to present my views today. I should begin by stating that I support the proposed Ontario motorist protection plan as an alternative to the continuing escalation of auto premiums. I do wish to add, however, that if the benefits are increased over the proposed amounts or, more important, if the threshold requirements are softened, there will be no relief from higher premiums and no future cost containment. In fact, it is my belief that there is a great possibility that it will become more expensive than the present system.

I have to admit that, in my opinion, there is obviously not a perfect plan that will suit everybody. Everything is a tradeoff. Settlements for nonthreshold injuries and higher benefits simply cost more and the Ontario motorist understandably is simply unwilling to pay more.

However, today I would like to address the positive aspects of the new plan. There is a positive change for those people who are seriously injured and who are deemed not at fault. Not only do they have the same course of action as they do today, but they will also receive greater benefits more quickly until their case is settled. This has to give them greater peace of mind, especially for those people who go to court and end up not winning. I do not think we have heard too much about the people who actually lose their cases. They are out there. Obviously, if they know benefits are coming in, they should have more peace of mind. But today I would like to speak about another group of unfortunate

people who will gain substantially from the new plan, those people whose injuries easily meet the threshold requirements but who cannot sue for adequate damages or compensation.

I have handed to the clerk of the committee an exhibit concerning the case of Paul Franks, the 21-year-old son of Mrs Franks. To briefly give you the circumstances of the accident, Paul had been operating his father's 1986 Ford Mustang on 20 June 1987 at approximately 10 pm. He was 19 at the time of the accident. Paul lost control of the vehicle and the vehicle rolled over. The vehicle was damaged beyond repair. Mrs Franks's son unfortunately sustained a severe closed-head injury and was rendered comatose.

On 21 April 1988, he was admitted to the Leir Institute in Erie, Pennsylvania, which specializes in the rehabilitation of victims with head injuries. I should add at this point that this gentleman had to attend Erie, Pennsylvania, because there were no such rehabilitation services in the province. Paul will be released to his mother's care in April of this year. Thankfully, he is now able to talk and read a little.

On the first page of the exhibit in front of you is a projection of the claims cost. In the left-hand column are the actual claims costs. These are on the conservative side. The second column is what is payable under the present system and the third column is what would be payable should the proposed plan be adopted. On the second page, to support those figures, we have a breakdown of the medical, rehabilitation and future care costs. When you go through those figures, you will see that the present plan pays \$101,000 under accident benefits; the new plan would pay a minimum of \$947,875.

If there are no questions on the actual projections or the cost of rehabilitation and future care, I would like to bring some humanity before the committee and ask Mrs Franks to describe to you what she has been through to arrive at where we are today with her son.

Also, Mrs Franks has been actively involved in group meetings. I am going to solicit her views on the two groups of people at those meetings, those wearing "No-fault, no thanks" buttons and those who do not wear them. With that, I would like to hand over. You have now met these people, Mrs Franks. I wonder if you can tell the committee—

Mrs Franks: I was at a meeting last night for the head-injured and the ones I found were using

"No-fault, no thanks" were people who had gotten a settlement. I am sure people who are out here and who have their loved ones brain-injured, there is no way they would be happy with the \$25,000 no-fault. I feel that people get very greedy. They want more than what they really need. If they would only be content with what they need to look after their loved ones happily, it would be a better system all around. I think everybody would benefit from it.

I really feel that if this system was in when Paul had been brain-injured, we would not have been under so much stress. The stress that we have been under, not only financially, I feel as though I have fought the full world trying to get some help for my son. I have called all the hospitals in Ontario and all they can offer me is chronic care for Paul, and that is no good, that is not what Paul needs. But finally I have gotten through to the government.

I have sent petitions and everything, all through MPPs, and we have finally gotten home care for Paul, which gives us approximately 100 hours of home care. I think that is fantastic because Paul is now at a stage where he needs rehab that is of a higher level than chronic care. I really feel that if this other plan was in when Paul was injured, we would have a lot less to worry about and a lot less stress.

Mr Walpole: I just would like to add on the fact that you have had to move homes and the implications of that.

1410

Mrs Franks: We had to move homes to accommodate Paul. We were in a house with a mortgage of \$55,000. To accommodate, we have had to move into a house that is \$120,000. We get \$25,000 no-fault. We do not do this because we want a wonderful big home; we do this because we want a home to be able to accommodate my son. That is all we are asking for. We are not asking for luxuries. We are asking for something that I feel is a necessity to have our son home in a home environment. That is all we are asking for really.

Mr Walpole: Just one final point: It is my belief that if the OMPP in fact is adopted, this province will see an increase in rehabilitation facilities because that will be in support of this plan. With that thought in mind, I would also like to ask Mrs Franks to explain to you the treatment she received for her son from the medical profession and also the events leading up to her son's attending the Leir Institute in Erie, Pennsylvania.

Mrs Franks: When Paul's accident happened on 20 June 1987, Paul was admitted to Sunnybrook Medical Centre where the doctors told me that Paul would die with pneumonia, and if not, then he would be a vegetable for the rest of his life. Then I decided I needed to go and talk to Paul's neurosurgeon. He told me: "Throw him in a room. Forget you've got him." This was a man who had saved my son three weeks prior to this. I cannot understand the philosophy in this. Why save him when he is telling me to throw him in a room, forget I have got him? You just cannot do that. They gave him life and what do they want to do with him? They want to forget him.

I said that they had given up, so I had to move Paul to another hospital. They wanted me to put him into chronic care. There was no way. I went and saw chronic care, and I would not put my dog in there. So then I called and called. Finally, through a coincidence, I happened to get the name of Leir. We took Paul to Leir in April 1988. Paul is now in Leir, but we are in the situation now that they are forcing us to bring Paul back to Ontario, still under the same plan, where we have no help for Paul.

Finally, now the government has come through with this. It is a new pilot project that Paul is now going to come under. We are very lucky. We are very, very fortunate because Paul is the first one. There are three coming back—and Paul is one of them—to Ontario to try this new plan. It is not a plan where we can say, "We'll try to make it work." We have to make this work because there is nothing else out there for these kids.

Mr Walpole: Perhaps, finally, would you like to describe the involvement of your local MPP?

Mrs Franks: First of all, we tried to ask OHIP to pay the \$3,000 to fly my son down there. They would not allow us that, because they said it did not cover that. So I went to Walt Elliot, who at that particular time was our local MPP, and he fought for me and tried to get Paul the money to go down. Finally we could not get the money anyway, so I had to swallow my pride and go and ask servicemen's clubs and different things like this to run benefits to pay for Paul to go down there. So finally we got that and we took him down there. I took pictures of Paul before and after and gave those to Walt Elliot and asked him to lobby this to the government and show it that this is what we can have if it only gave these kids a chance. He did all that, and he has been very, very supportive. Also, Patti Leonard and Chedoke McMaster Hospitals have really been pushing very, very hard for this one kid.

So I am really lucky that Paul is getting this chance, but I know that it is because I have been fighting and I am a person who will not take no for an answer, especially if the hospital has given my son a breath. I have to fight right to the end for him. But it is terrible that you have to fight the full world and also have the stress of the financial situation. Right now I have moved into this house, I am up to here with it, and also with the stress of my son, whereas if this new policy were in, I really feel that it would help all around.

The Chair: Thank you very much. I have got some questioners. Are you finished?

Mr Walpole: I am finished.

Mr McClelland: Mrs Franks and Mr Walpole, thank you for your attendance here today, particularly you, Mrs Franks, and I say that with no disrespect to you, sir. I know it is a very difficult position for anybody in your situation to come. We have heard from numerous people and numerous organizations across the province, and there are always categories of people who will have a particular perspective based on their experience. In situations such as your son Paul's, there is nobody whose heart is not touched by the circumstances, and we have seen so many people hurt, those who have had an at-fault party from whom they can recover and those such as your son for whom there was no at-fault party to look to for further financial recovery.

Let me just simply say that there are a number of categories of people based on the present system and the system that will be in place. Your son obviously would fall in the position where he would cross the threshold under the proposed legislation, simply to say that he would be in a position to sue had there in fact been somebody there to sue and recover.

I think one of the benefits that I look at in trying to balance the very difficult process of arriving at a conclusion or decision with respect to the proposed legislation is looking at the broad spectrum of individuals. I want to thank you for taking time to articulate a position for people who for the most part have been, as Mr Walpole said, not discussed at length, that category of individual who is over the threshold in any event but who would still remain as a very serious injury and really does not have adequate compensation.

I hope that it would be the beginning of a change in our society, the philosophy of how we treat people and our sense of what is important. It seems to me the sense of what is really important is not a sense of looking to somebody all the time unnecessarily for a sense of retribution, if you will, and the pain-and-suffering element, but

rather to put people whole; a philosophical emphasis on putting people back into the workplace, if possible, and if not, at least putting them where they can live with a sense of dignity and with some compassion and love and care of their loved ones. I know it is difficult for you to come here and express that, and for that I want to say to you, on behalf of all members of this committee and indeed the Legislative Assembly of the province, thank you for sharing something that is very personal and, I am sure, very difficult for you to come and share with us.

Ms Oddie Munro: I would like to thank you for the breakdown on the rehabilitation expenses because I think what I have been trying to understand is why clients were not able to use the \$25,000 that was available in the current scheme. It just did not make sense to me, although I certainly accept that some people would not have used the \$25,000. But you have shown, certainly detailed, almost \$300,000. Those are good statistics in your particular case.

Are you able to get any responses at all from your son as a result of the rehab?

Mrs Franks: Oh, yes.

Ms Oddie Munro: So he clearly has not only benefited but it has helped keep the family life intact as a result of it?

Mrs Franks: It has, and his quality of life is a lot better. He had no quality of life, he had nothing when he went to Leir in Pennsylvania. At least now he has something, and he is a lot happier himself. He is able now to talk. He reads, he does math, he spells his name, spells his mom's name. He has come a long way, and I thank God for the help that I have had to get him down there. I must say our insurance man was right there. He came right away to tell me about this \$25,000 no-fault. I did not even know about the \$25,000 no-fault, but he was there to tell me that if we needed any of that for Paul, it was there, just to send in the bill and he would pay it. That has happened. OHIP pays 75 per cent of Paul's rehab in Pennsylvania, where Leir accepts that as full payment. But then when Paul went out to another hospital, where he had to go for a calcium removal, which cost \$4,000, OHIP paid \$3,000 of that. So the insurance paid the other \$1,100. Also, he had to get radiation, which cost \$4,000, and OHIP only pays \$200 of that. So you can imagine that with bills like that, the \$25,000 goes like a whiz, and that is not even anything towards any renovations. When you are looking at wheelchairs and tiltboards at \$6,000, \$25,000 is no good. It is better than most people, though, so I should be thankful really.

1420

Mr Philip: I want to thank you. We have had a number of people like yourself who have come forward, I think with some courage and considerable inconvenience to themselves, and shared with us experiences that have been the most tragic part of their life experiences, and we appreciate that.

I am sure that no one will question your rightful concern that the benefits payable now, or indeed under this legislation, are inadequate. I think that has been demonstrated by various groups that have come before us. But I ask you this question. Do you feel that if your son, through an accident that similarly was not his fault, but instead of it being a motor vehicle accident he had dived into a swimming pool or fallen off the roof of a building that he was having recreation on, or sports, if that had happened with an identical sort of situation, do you think he should have the same kind of treatment that you feel your son is entitled to and should be getting?

Mr Walpole: Do you want Mrs Frank's view or my view on that, sir?

Mr Philip: How about either, whichever one of you wishes to comment.

Mr Walpole: First of all, I think when you look at the number of motor vehicle accidents in this province—I mean, I do not know the figures and I do not pretend to. I began my career by adjusting claims for nine years and it was the motor vehicle accidents that I was mainly involved with. Very rarely did I become involved in the swimming pool accidents. So I would say that the big problem, I think, is motor vehicle accidents.

As I said originally, there is no perfect plan, but as we are addressing automobile—

Mr Philip: I guess no one disagrees with your contention that the benefits should be increased. Where we may part company with the government on this, and indeed where most people who are what we would call head injury victims who have appeared before us are in disagreement with this legislation, is that this really does not solve the problem, in their opinion.

Indeed, we found out this morning that as a result of this legislation, there will be in actual terms some \$800 million less in benefits overall, and that is not just including major injuries payments to people like your son, but all benefits. If one adds another \$143 million that the taxpayers are going to be subsidizing the insurance companies, it means a giveaway of close to \$1 billion. I guess one would have to ask,

is there not a better way of doing it than giving away \$1 billion, which could be better put into services for people who are injured?

Mr Walpole: First of all, I have never understood that term "giveaway" as it has been discussed at these hearings. As I understand the situation, there is a choice for the Ontario motoring public. It can continue with the present system if that is what it really wants. The problem is that that system is producing escalating claims costs and thus escalating premiums.

When this whole matter was addressed over the last two years, it was on the cost of insurance. That is where we started out before we got to the matter of benefits. There is a choice: We can continue on the present system and pay for it. We can adopt a system at today's cost, with future cost containment, and adopt the Ontario motorist protection plan proposal, which, in my view, having been heavily involved in claims adjustment—because the most seriously injured people still have the rights they have today and yet people like Paul Franks will benefit greatly from it, I really believe in this proposal.

It is the first time I have heard the figure you have just mentioned, but if those funds are available, if those funds and if that figure is correct, you will see future cost containment and increased benefits if that is the way it works out. But we have heard the Ontario Automobile Insurance Board, we have heard everybody suggest that is not the case as far as pricing is concerned. As I say, that is a new figure to me.

But if it is true, then the Ontario motoring public will have a very good plan, much better than today's plan, plus it will cost less. If you have a better plan for less money—and if those funds become available, we will have that—then I think that even adds more credence to adopting the Ontario motorist protection plan.

Mr Philip: I wish I had your faith. I do not believe that giving \$1 billion extra of our tax money and our premium dollars to the insurance company is going to reduce the cost of premiums, and if you do, I wish you luck. Perhaps in a year's time we will find out who is right.

Mr Walpole: I just do not accept your comments that this money will flow to insurance companies. Insurance companies have been severely regulated to date, and if you look at the proposed OMPP conditions that we will operate within, I can assure you that if you want to mention that terrible word "profits," the level and degree of profitability will be very strictly controlled and to the benefit of the Ontario motoring public, because we now have a rate

review committee and we will now have an insurance commissioner. Never before in the history of this province has auto insurance been under such a microscope. It will be controlled and there will not be any exorbitant levels of profit.

Mr Philip: I admire your faith. Most people suffering from head injuries do not share it, and we will find out whose faith is correct.

The Chair: Mrs Franks, sir, thank you very much for your presentation.

Next we have Dr Deathe. Doctor, the clerk has distributed copies of your presentation. We have got approximately 15 minutes. If you could leave us some time for some questions, comments and discussion, we would appreciate that as well. Please proceed after you have identified yourself for the benefit of Hansard. Thank you.

DR BARRY DEATHE

Dr Deathe: I am Barry Deathe and I am the chairman of the department of physical medicine and rehabilitation at the University of Western Ontario. I am a medical director of the regional amputee clinic and of the chronic pain clinics and I am on the advisory board of the Workers' Compensation Board with respect to the criteria and the process by which we can develop independent medical disability assessors.

I think I really only have a few points in 15 minutes. One is on threshold and one is on the system that you wish to put in to monitor that.

The threshold definition seems to be not consistent, in terms of its definition of impairment and disability, with the World Health Organization. I have indicated that and given you a comparison on page 2 of that short, three-page summary. It seems to me unusual that in this province we are going to basically have different definitions depending on where one slips and falls, if you will.

I treat the spectrum of people who are disabled, regardless of where they sort of slip and fall or have their automobile accidents, and I think this threshold definition is extremely restrictive. It is basically going to disenfranchise those who have soft tissue pain and disability. Essentially, what you are doing is giving more benefits to those with catastrophic illness and you are taking away the benefits and the rights of those who have soft tissue pain and injury.

The Workers' Compensation Board's experience is that the vast majority of people who have trauma essentially end up with chronic pain, and that is an area in which I am an expert. Most of the chronic pain arises essentially from chronic

strains, if you will, chronic sprains of the neck or of the back, and those are the hardest disabilities to treat because they are essentially invisible. You cannot really take an X-ray; you cannot measure their pain, so to speak.

What you have to do is measure the amount of dysfunction or disability that you have. Some of them may be permanent and most of them are serious. I think where your definition is extremely restrictive is that you demand that it be permanent and serious, as opposed to serious. It can be serious for perhaps two or three years out of a person's life.

1430

If any of you were involved in a car accident or unable, because of neck or back pain, to do your usual occupation for three or four years, I think you would have to admit that that is serious. Even with the best rehabilitative efforts by people like myself and my teams, there is still a residual disability that may or may not be serious but is certainly permanent.

I am very frightened by your definition as to the impact that it is going to have on a majority of people who have injuries. I am confused that after you did a good job, in my opinion, in revamping workers' compensation in terms of the definition of impairment and disability, you turn around and essentially give us what I would say is a 1950s definition of impairment and disability. You essentially then will provide that sort of infamous meat chart which workers' compensation and everybody else has tried to get away from. I think it is going to cause a lot of untold suffering and confusion, certainly in the health care community. The fuller ramifications I simply do not know at the present time.

My second point is essentially that if you are going to offer a no-fault or WCB-like solution to the program, then what you are basically going to create is a multiplicity of small WCBs whereas what you are going to need is one huge omnibus WCB of the highways, if you will. I have spent a lot of time in trying to assist my patients in dealing with various insurance companies, and essentially the criteria vary from insurance company to insurance company. At least with workers' compensation you can deal with one body, whether you agree with it or not. For the patients I treat who have had motor vehicle accidents who have their legal advocates, at least that acts as a balance of power, if you will, so that if I have trouble in obtaining extra services, such as psychological services, I can sometimes use the lawyer to encourage the insurance company to do this.

One of the unspoken assumptions, I think, is that you believe that the health care system has the resources to carry out this plan. We do not. The resources devoted to disability and medical disability specialists such as myself are exceedingly small. In view of the continuing struggle to fund health care services, generally speaking, people with heart transplants, etc., win out, and probably rightly so.

We really do not have the resources to try to cope with the transfer of responsibility to the health care system without the health care system being more infused with money, and yet I hear that essentially there is going to be money taken away from the health care system in terms of reimbursement. I simply do not understand how you expect that people like myself are going to stand up equally with the cardiovascular surgeon and attempt to gain more resources in order to treat these people.

Probably the final thing I have to say is that in the treatment of chronic pain, and I have run southwestern Ontario's only chronic pain inpatient unit, what I basically see is that people who come in are basically very angry. They are usually the workers' compensation patients, because essentially they do not have an independent advocate to try to steer them through the system. They have me to help steer them through the health care system, but they do not have anyone to help them steer through the bureaucracy. As a result, these people make my job much harder because they are extremely angry. They are hopeless and they feel powerless as well. In the end, what happens is that their disability behaviours are amplified out of, essentially, revenge and just digging their toes in because they feel they have been unfairly treated.

When I treat the automobile accident people, they are also angry because of their losses, but their sense of power is there because they have an independent advocate who at the present time is a lawyer. I find that in treating those people who have an independent advocate, the results, at least in terms of minimizing their disability and restoring their function as much as possible, is much easier.

I am afraid, at least in my humble opinion, that my job is going to become incredibly harder if this system goes through and we are—at least, I am—going to be faced with a multiplicity of small WCB-like agencies, the insuring agencies, which at the present time at least, simply have no capacity to deal with these people.

In the United States, what is happening is that they are starting to employ what they call case

managers. The insurance companies start to send in people to monitor the health care system. What happens is that although you may have \$25,000 or \$500,000 worth of benefits, you still have to get the okay from the insuring agencies and they have their criteria. They basically have the power of life and death over whether people get these benefits, and then we face all these unnecessary delays.

I guess, in short, I am concerned.

The Chair: I think you have some questions.

Mr Philip: It is very useful to have you here because of your hands-on experience. What we are getting across the province, not just from physicians, physiotherapists and brain injury associations but also from lawyers, and indeed this morning from a very distinguished retired judge, is the whole problem of defining a permanent disability. We even had yesterday a very eloquent presentation on this and the problem of compensation under this bill by the former Liberal critic of the Attorney General, Albert Roy, who served in this House many years and was quite upset with this bill.

As someone who represents at the moment some 340 people before the Workers' Compensation Board, it seems to me quite unjust that someone, if he is injured at work, perhaps driving a car in the line of his work, can be compensated for psychological overlay, or whatever other term they may wish to use, and yet if he is driving an identical vehicle, is hit and injured in an identical way and with the same symptoms, he will not get compensation under this act for that same disability. Does it not seem a little unjust that if you are going to have an accident, you had better have it at work, because if you have it in your spare time, then you are going to get fewer benefits?

Dr Deathe: It does seem unjust to me. I simply cannot understand it and I cannot understand it in terms of the WCB legislation, which was unjust in the past. I think the government has done a good job in trying to define impairment and disability. I do not see why they do not carry on with those definitions.

Mr Philip: The problem, according to David Slater, is this whole problem of trying to prove a threshold. I am sure that as a medical practitioner who has specialized in this, you can comment on this. Are you going to be involved in an awful lot more appearances in court and appearances in dispute resolution procedures as a result of this problem of defining what is a permanent threshold disability?

Is someone who is going to be out of commission for 10 years or 15 years permanent? If one is age 60, is a permanent disability 10 years, because your life expectancy is maybe in the mid-70s or 80s, actuarially at least? If you are younger, then does a permanent disability mean that you are supposed to be disabled for more years because of your age? These are some of the questions that have been raised by lawyers, judges and other people who are looking at this bill. As a practitioner, do you see that this is a problem?

Dr Deathe: I think it is a very serious problem. I think the first problem you have is that you have to separate permanent from serious. You cannot have it permanent and serious. This is extremely restrictive and would throw out all soft tissue pain and disability.

No one can decide what is truly permanent except for probably the very severe brain injuries. I do go to court a lot. I go to court for the insurance companies, I go to court for the lawyers, and most of the time I think the judges depend on my definition of what is serious and what is permanent. I cannot measure it. All I can do is say, "I've looked after a patient for six weeks" or "I've done this and that and their function appears to be at this level."

1440

People assume that we can measure pain, for instance. We cannot measure pain. We can measure the disability arising from the pain. I cannot predict in terms of whiplash injuries, for instance, whether that disability will still be there five years from now. I can say that it may be likely. But I can certainly comment, with the use of my team, on the extent and magnitude of their disability as it applies to what they formerly used to do.

Disability is very person-specific and very task-specific. You cannot take a fractured bone and predict the extent of disability in the future. That is nonsense. The disability arising from a fractured bone is going to depend a great deal on whether the person is a ditch digger, a bus driver or a pilot or what. It very much depends on what that person's occupation is and what that person's capabilities are. I think one of the serious problems with this legislation is that you make the assumption that you can predict the extent of the disability from the extent of the impairment and you cannot.

Mr J. B. Nixon: Thank you for appearing today. I would like to make a couple of suggestions to you, respectfully.

There is a great deal of confusion in the discussion that is going on around this bill, confusion over the right to sue as opposed to the right to compensation. The threshold determines certain individuals' right to sue. It does not determine individuals' right to compensation per se.

For instance, all are entitled to compensation under the no-fault benefits, regardless of whether or not they are going to be able to exercise a right to sue, which is quite a different situation from the WCB situation, where there is no right to sue at all, whether you have a serious or minor injury. In the Workers' Compensation Board you have no right to sue but you have a right to compensation.

So the definition of impairment from the WCB, I suggest to you, cannot be compared with the definition of the threshold in auto insurance because you are really comparing apples and oranges. The definition of impairment in the WCB context defines the right to compensation. The definition of the threshold in the auto insurance context defines the right to sue.

Dr Deathe: The workers—

Mr J. B. Nixon: Actually, if I can just finish, one of the things that troubles me greatly is when people come before us and say: "You've taken away my right to sue. I won't get anything now." I find that troublesome, because people's right to compensation continues, it is just the right to sue that is in doubt for the majority.

Dr Deathe: The workers' compensation definition of impairment is really for the dual award system, and all that does is allow them a percentage of the \$45,000 for pain and suffering, plus or minus \$20,000, but disability is defined very clearly in the Workers' Compensation Board as the difference in the lost benefits and I do not think that is defined in this system.

Mr J. B. Nixon: I am suggesting to you that they are different systems.

Dr Deathe: They are the same human beings.

Mr J. B. Nixon: But we are talking about systems of compensation.

Dr Deathe: I do not think you are going to find that the people in this system are going to be compensated the same as workers' compensation, to the same fair degree.

Mr J. B. Nixon: What do you say that—

Dr Deathe: If I may finish, I think you are making the assumption that the insurance companies will willingly give the rehabilitation costs. My experience has been that they drag their feet and force the patients to prove that they need

them and the patients then have to get their lawyers to sue in order to get their rightful rehabilitation benefits alone; forget about the economic benefits. That has been my experience.

Mr J. B. Nixon: Do you think it is fair to the workers' compensation system when you have a clearly negligent employer who permits an occupationally hazardous, unsafe situation to exist knowingly and a worker is killed or seriously and permanently hurt and he does not have a right to sue?

Dr Deathe: I personally do not think that is fair.

Mr J. B. Nixon: You do not think that is fair, but you did tell me that the workers' compensation system is a good system.

Dr Deathe: The workers' compensation system, with respect to the economic benefits, in giving them at least their lost benefits, is a better system than what it was.

Mr J. B. Nixon: Would you agree that it is difficult—

The Chair: I am going to have to interrupt here.

Mr Runciman: I just want to follow up a bit on that, because I think it is an important element of this. The doctor, as I understand, is saying that the workers' compensation plan is a better plan than what is proposed under Bill 68 in terms of compensation to accident victims. What we have experienced in this Legislature in the past number of years, and I think it was outlined by the retired judge this morning, is that we have seen massive demonstrations at the Legislature by injured workers in respect to the problems that they see through the benefit package available through WCB. We are already getting that kind of response with WCB, which, you were saying, and I think it is quite accurate, is a better plan than the government is proposing for automobile drivers in this province.

Dr Deathe: I think the old workers' compensation plan was horrible. I think the new workers' compensation plan is much better, and I think your automobile plan is like the old workers' compensation plan. I think you are going to create one horde of angry, angry people.

Mr Runciman: I share that concern.

Dr Deathe: And frustrated doctors.

Mr Runciman: I want to talk a bit about your pain and suffering clinic in London. We have had a number of people appearing before us—and of course, as you know, this legislation is going to

take away the right to compensation for pain and suffering—we had an insurance company executive before us a couple of days ago suggesting that it was not appropriate for compensation to be delivered for pain and suffering, although the OAIB and certainly Mr Justice Osborne felt that that should be retained. As you are someone who is dealing with individuals who have gone through a great deal of pain and suffering as a result of automobile accidents, I guess I would like to hear your views in respect to that particular element in this legislation, the fact that they will no longer be able to seek compensation for pain and suffering.

Dr Deathe: I think what that will end up doing is creating a great deal of anger in the patients, because they will think that you have questioned their legitimacy when they talk about their pain and suffering. We cannot measure pain and suffering, and I think, if my knowledge is correct, the WCB has limited the award on pain and suffering to \$45,000. The courts have limited those awards as well, but what they do do is compensate for dysfunction, and what we try in our clinics is to look at maximizing the function even though the pain continues, because we can measure dysfunction but we cannot actually measure pain. I think that is where people make the mistake in that.

When you take away all reward or compensation, if you will, for pain and suffering, essentially what the patients say is that you are then denying that they are legitimate, that it is all in their mind. That creates even worse behaviours and worse anger.

The Chair: Doctor, I am going to have to interrupt here and thank you very much for your presentation.

Mr Oliva, the clerk has distributed copies of your presentation. We have got 15 minutes. If you could leave some time for some questions, comments and discussions, we would appreciate it. Identify yourself and then proceed.

FRANK OLIVA

Mr Oliva: First of all, I would like to thank the committee for permitting me to appear. My name is Frank Oliva. I am from London, Ontario. I was involved in two separate motor vehicle accidents, in September 1983 and in May 1986. I am really concerned about the proposed legislation and how it would affect people like me if it were made law.

Let me tell you something about my background. I was born in Italy and I came to Canada in 1955. I have not been unemployed since the

date I arrived in Canada. I obtained my hairdresser's licence in 1957 and moved to London. Over the next few years, I and my brothers and my brother-in-law opened a number of hairdresser salons. Before the motor accident, we were operating four separate shops. We were five partners in the business, being three of my brothers, my brother-in-law and myself. The businesses were successful enough to allow us to pay for the mortgages of the salons and support our families.

In September 1983 I was travelling to my home from a fitness club. I was going south on Highway 126 when my car was hit by another car that was going north and crossed the median. I was wearing my seatbelt and I was not at fault in the accident. As a result of the accident, I suffered a serious whiplash injury.

1450

I was initially off work completely for about six to eight weeks and then returned to work gradually in my own shop. Because I was self-employed, I could control my hours and to some extent I could control the job that I do. I cut back on my hours from 45 hours a week to 12 to 18 hours a week. Whenever I worked, I was in a great deal of pain and I still am. I had to work with my arms out from my body, which made my neck very sore and caused my head to feel like it weighed a ton. Because I was not able to work full-time in my shop, we had to hire extra help at extra cost to our business. Also, my regular customers gradually stopped coming to me because they knew that I could not do their hair and because I could not spend as much time with them. I was required to take regular breaks and to rest often in the back room on a medical cot.

My brothers, my brother-in-law and I had always operated the business in an equal partnership. Regardless of how much money came to each salon, we always shared an equal amount. Much of the profits of the business were put back into the business to pay off the mortgages. As partners, we also bought some other income property which we paid for out of the profits of the business. I continued to draw the same amount as they did for a long time after the accident.

I kept hoping that I would get better, but I did not seem to improve. I was taking physiotherapy on a regular basis, and in fact I still do take physiotherapy on a regular basis. I was under the care of a very good physician in London, and after a few years I realized that I would not likely be able to go back to work full-time as a hairdresser again.

I never went to school in Canada, in English, and, as you realize, my English is not very good. I knew that if I was going to do anything else besides being a hairdresser, I would have to take courses to improve my English. I did that and continued to take those courses until December 1989. I was able to take those courses at the adult education centre and later I went to Fanshawe College on a course run by the Ontario government.

My own insurance company also agreed to pay the cost of a rehabilitation worker becoming involved in the case. They did not agree to pay me anything for loss of income because of the fact that I continued to take the same draw as my brothers out of the business.

Because of the second accident I had, which again was not my fault, my case did not reach trial until recently. The trial judge has reserved her decision on that case, but it is clear to me that I will receive more than I could have hoped to receive had this legislation been the law at the time of my accident.

I know there is a threshold system under this proposed legislation, and if my injury were not considered serious enough to get over that threshold, I would not be entitled to sue the driver who hit me. I have been told that the threshold requires a serious or permanent injury and I am not sure whether my injury would have been considered serious and permanent enough to allow me to bring an action. My doctors were of the opinion that I had a mild whiplash, but because of my job, hairdressing, it caused me serious disability. I do not know whether that type of injury would be considered serious and permanent enough to allow me to get over the threshold. I understand that if I did not get over the threshold, I would not be entitled to anything for pain and suffering.

My injury has had a very real impact on my family. It has affected my ability to work, my ability to do things around the house and my moods. Because I am always in pain, I am irritable with people and much shorter with them than I used to be. Members of my family have been very good with me, but I still have to hire people sometimes to do things around the house. The cost of hiring people was included as part of the damages claimed in my action and I believe I will receive all the money back once the accident is decided.

I also understand that under the proposed system, if I did not get over the threshold, I would only be entitled to 80 per cent of my lost income. I know the problem I had under the old

system in trying to get my insurance company to pay me \$140 per week because of the fact that I was taking the same draws out of the business. They did not want to recognize the fact that the business had lost some income and that I had to hire extra help because I was injured.

From what I have been told about the new system, I do not think it would be any better. Even if I was able to get 80 per cent of my lost income, they would only pay me 80 per cent of the amount that I drew out of the business and would not look at the profits of the business and the extra costs that it cost me with the business. Self-employed businessmen usually try to put as much money into the business as they can. The system which is suggested would not help small business at all.

I know that under the new system my own insurance company would have to pay medical and physiotherapy expenses for a longer period of time. I was able to take most of my physiotherapy at the hospital and it was paid for by OHIP. The clinic I have been going to for the last year and a half requires me to pay, but they have agreed to receive their money once I get a judgement against the defendants. I have included in my claim the cost of ongoing physiotherapy treatments and ongoing maintenance expenses around the house.

As a result of my injury, we were required to close one of the shops down so that one of the partners could come over and help me at the shop where I work. From what I understand, I would not be compensated in any way under the proposed legislation for the loss of the shop.

I know that extra disability insurance will be sold by insurance companies if this proposed legislation becomes the law. That will of course be another cost for people buying insurance. My partners and I have never worried about disability insurance, because we always knew that we would look out for each other, and we have done so. I do not even know if I could get disability insurance to cover me for the type of loss that I had as a result of my injury.

I do not think this proposed legislation is fair to the public generally, and to self-employed people especially. People who are trying to build up a business, to maintain a business, would not be fully paid for the losses they suffered if they had an injury that did not get them over the threshold.

I understand from reading the newspaper that this proposed legislation will get rid of somewhere around 95 per cent of personal injury actions. I admit that I do not yet know what

amount I will receive from the courts as a result of the injuries I suffered and the effect of those injuries on my business. Under the present system, though, I was able to present my claim fully to the courts and to make claims for my pain and suffering, the effect on my family, the effect on my business and loss of income. Under the system that is in place now, I at least have a chance to be fairly compensated for the injury which I suffered as a result of the negligence of another driver. Under the proposed system, I know that if I did not meet the threshold, I would receive little, if anything, in compensation.

I agree that the amount people should be entitled to get from their own insurance company when they are injured in an accident should be increased. Perhaps if that were done, a lot of people would not bother to bring claims if they were not seriously injured.

I do not understand why people have to give up their basic rights to a trial before the courts when they are injured. I have seen the commercials on television lately that say people who are injured at work can get money from the Workers' Compensation Board for their loss of enjoyment of life. I do not understand why those people, who cannot sue their employer, should be entitled to get more than the people who are injured in a car accident or as a result of the negligence of another driver.

I wish to thank the committee for allowing me this hearing. Just a personal comment, I had many activities as a businessman and I was a sports fanatic, playing squash and golf and tennis. That has prevented me from doing that since 1963. I really believe that this system would not help me at all.

1500

The Chair: Thank you. Just a question: You mentioned you had two accidents, both of which were not your fault. The second one is before the courts right now. The first accident, was that settled or did that go to court?

Mr Oliva: They are both in court right now.

The Chair: They are both in court right now? I am sorry, I misunderstood that.

Mr Oliva: That is right, yes.

The Chair: So both of them are before—

Mr Oliva: Yes. I would rather not talk about the accident because it is still before the courts.

The Chair: I appreciate that. Just from your presentation, I thought you were talking only about the second case. The first case is still—

Mr Oliva: No, it is the first and second.

The Chair: Questioners, Mr Philip and Mr Runciman, up to two minutes.

Mr Philip: I guess it is more of a comment rather than a question. It is very interesting. We had similar testimony, excellent testimony, from a woman this morning who was active playing squash, who was in a job where you have to be fairly physically active at times, because I have been involved in mental health services. She was injured similarly to you and her lifestyle is dramatically affected. She can no longer do a lot of the things that she was able to do. The interesting thing is that if she were injured at work or if you were injured at work, you would get more than you would under this plan. It just strikes me as a strange injustice, that if you are going to be injured in Ontario you had better do it while being on the job because the Workers' Compensation Board, with all of its problems that we have all heard about, is still better than what the government is now enacting with this.

Mr Runciman: I am just curious when we have witnesses like this before us. You are from London, are you?

Mr Oliva: Yes, I am.

Mr Runciman: So you drove down here today to appear before the committee?

Mr Oliva: Yes.

Mr Runciman: What prompted you to appear before the committee?

Mr Oliva: I looked to the future, what is going to happen to small businessmen like me if an accident would happen as it happened to me. It is not just the change of the lifestyle, change of your moods. I gained 32 pounds since my accident and I feel like I am 100 years old.

Mr Runciman: I just say, sir, that some of the most telling and emotional, moving testimony we have had during the course of the public hearings has been from people like yourself.

Mr Oliva: I apologize.

Mr Runciman: No, you have nothing to apologize for. I think that the fact that you are not here with any vested interest—

Mr Oliva: No, I am not.

Mr Runciman: You are someone who is terribly concerned about people who could find themselves in comparable situations in the future if indeed this legislation goes through. I guess one of my frustrations, and I have been somewhat perhaps overly frustrated during the course of this, is that witnesses like yourself have not been able to have any visible impact, up to this point anyway, on the government members

of this committee. I hope that is going to change, but there is nothing to lead us to be optimistic about it. In any event, sir, thank you for coming all the way from London to be here with us today. We much appreciate it.

The Chair: Mr Oddie Munro or Mrs LeBourdais, whoever wants to go, two minutes.

Mrs LeBourdais: I think it is odd, Mr Runciman, that when we have been talking so much about soft-tissue and emotional and psychological injuries not being apparent—and that is one of the difficulties—perhaps it could also be said that the impact that all of these people are having on us may not be always evident in our faces, etc. I can assure you, and I think I can very safely speak for the rest of my colleagues, that we have received a lot of very moving testimony and it has impacted, very much so.

Thank you, Mr Oliva, for your presentation today. I guess I would like to simply ask, since you were a small businessman in conjunction with your brothers, etc, did you have disability insurance before?

Mr Oliva: No, we did not. We were five brothers and we thought we could cover for each other in case of sickness. We never expected anything like this.

The Chair: Thank you, Mr Oliva, for your presentation.

Marianne Butterworth, the clerk has distributed copies of your presentation. The next 15 minutes is yours. If you could leave us some time for some questions, comments and discussions, we would appreciate it as well. Please identify yourself for the benefit of Hansard.

MARIANNE BUTTERWORTH

Mrs Butterworth: My name is Marianne Butterworth. I am from Barrie, Ontario. Thank you for allowing me to speak before the committee.

I am here on behalf of all citizens like myself who have suffered psychological trauma as a result of a motor vehicle accident. I feel this government is doing a great disservice to all Ontario residents by denying the fact that these injuries do occur and are indeed very real. It can have as big an impact on someone's life as physical injury, perhaps more, because it affects the core of a person's ability to function. By denying people the right to sue for psychological injury, a clear message is being sent that this is not considered a true injury in the eyes of the government and thus deserves no compensation.

In November 1982, I was involved in a motor vehicle accident where, while stopped for a red

light, a car travelling at approximately 40 kilometres per hour hit my car from behind. At the time, I was three and a half months pregnant. I was wearing lap and shoulder seatbelts. Although there was no injury to the baby, immediately upon leaving the car I experienced a severe headache. In the days and weeks following the accident, I continued to have headaches as well as neck and abdominal pain. Treatment was conservative, in light of my pregnancy. After approximately five to six months following physiotherapy and mild analgesics, the neck injury was virtually resolved. At about that time, I gave birth to a healthy male infant.

Approximately one week after his birth, I developed severe post-partum depression. This presented as suicidal thoughts, as well as thoughts of harming my newborn son and uncharacteristic behaviour coupled with outbursts of rage. I might add here that I had no history of psychiatric illness prior to this. I was hospitalized for a period of two weeks, after which time I was sent home. Failing to cope with day-to-day life and unable to care for my newborn son, after one week I was hospitalized again, this time for four weeks. After my release, I worked through the next few months with great difficulty. Once again, I had to be hospitalized for five days after slipping back into deep depression. Throughout the next year and a half, I was followed by a psychologist who helped me with my long road to recovery.

The reason I present my story to you is that after many assessments, some by experts in post-partum depression, it was felt that the single most contributing factor in my depression was the car accident. Because of the devastating effect on my life, my husband was left to cope not only with my illness, but our newborn infant and two-and-a-half-year-old son. Being of somewhat precarious health himself, he was unable to perform to standard his demanding and stressful job as an ambulance dispatcher. He had no choice but to go on long-term disability, where he remains today. Luckily he had this option or his employment surely would have been terminated.

We now had a reduced income and many out-of-pocket expenses, such as baby-sitting and travel. We eventually had to declare personal bankruptcy. More important, though, I missed out on the very important first few months of my son's life, months that can never be recaptured and will always be tainted with bad memories.

After many assessments with specialists and reams of documentation, the insurance company

involved felt we had a reasonable right to be compensated for the hell we had been through. Under the proposed legislation, as it is being presented, I would have not received any compensation, not even for the neck injury, as it resolved relatively quickly. This is incredible to me, considering all I went through; some things I dare not mention here. I was the victim; I was stopped at a red light. I was not at fault in any way, but would be made to feel so with this legislation.

Our government, which is supposed to act in the best interests of all people of Ontario, must reconsider the criteria it has established for compensating injured parties. We are human beings, not robots—complex physical and psychological beings. Not all people injured in car accidents are killed or crippled, but our lives can be completely changed by a split second of carelessness. If psychologically injured people are denied the right to sue, this government is contributing to the stigma attached to mental illness as well as sending out a clear message that psychological injuries are somehow not legitimate.

I might add that the compensation I received allowed me to return to school and become a registered nurse. I was able to get my life back on track and help support my family. While I was attending school, I was again involved in car accidents, two in one year. Again, in both instances, I was stopped at the time and was rear-ended. I was pregnant when the first one occurred and luckily did not suffer the same type of debilitating illness. However, I spent the six months left in my pregnancy worrying that I would have to go through the same thing.

1510

Two and a half years have passed since the last accident and I am still experiencing a moderate degree of neck, head, back and arm pain. I have changed jobs five times in two years in an attempt to find a position that would be less physically demanding. I have been told by a physician that if the pain is not relieved after three years, then I can expect to be left with some permanent injury. My injury is not serious and not completely debilitating, but it does affect me every day of my life. Should a person not be compensated for having to live with pain every single day, unable to perform her job to standard, even unable to hold a full-time position?

I urge the Peterson government and the general public to look at no-fault insurance with open eyes. Do not just see promises of low premiums. The person who is not at fault is now the one

being penalized just for being in the wrong place at the wrong time. Drivers who are irresponsible and careless must know they will have to be accountable for their actions.

Even now, six years later, it is very painful for me to think about what my family and I went through, and more difficult still to talk about it like this. But I feel an obligation to enlighten the government about those of us whose story you never hear. The media rarely tells it; the public never hears about it. The person who caused the accident might know about it, but it is the victim and his family who must live through this catastrophic time. I implore the Peterson government to protect all innocent victims, not just those who have a visible, serious and permanent disfiguring physical injury.

Mr Philip: You are from London, Ontario?

Mrs Butterworth: Barrie.

Mr Philip: Barrie, I am sorry. We have discovered this morning, by going through the actuarial tables, the government's own figures, and with some assistance from Professor Carr, that this legislation actually transfers some \$800 million out of benefits back to the insurance companies. There will be \$800 million less in payouts. You paid for insurance and you thought that you were going to get certain types of benefits. Do you think that is a form of the government, by one step of legislation, simply stealing \$800 million out of your pocket and that of the other people in this province? Do you have a Liberal MPP in your—which part of Barrie do you live in?

Mrs Butterworth: I would have to ask my husband. I do not know.

Mr Ferraro: It is Liberal, Bruce Owen.

Mrs Butterworth: It is Liberal, yes, Bruce Owen.

Mr Philip: Have you spoken to him about it?

Mrs Butterworth: I actually have been negligent and I have not, but I am planning to. I have drafted a letter to him.

Mr Philip: The lady who came from London this morning had a very large petition and she is going to see David Peterson, so you might see—what would you call, not a Peterson, a Petersonette or whatever is a small Peterson in your area, whoever that is.

Interjection: An enlightened person.

Mr Philip: Not very enlightened if they support this legislation.

Mr Kormos: I should tell you that tomorrow a resident of Niagara Falls will be delivering to me

at my constituency office in Welland a petition with some 400 names on it of Niagara Falls residents, which you might know is represented by a Liberal member, a backbencher as it is. He was not always a backbencher, but he is now.

I can tell you, and I hope you would tell your friends, relatives and neighbours, that nothing is more persuasive to any government, even this one, than the risk of not being re-elected. The message to them, by petition, by phone call, by letters—I tell you that Peterson's office, when it gets phone calls from people saying, "This is damnable legislation. Don't let it go through. My premiums are going too high and I'm getting screwed around too badly by the insurance companies as it is," Peterson's office is telling them, "Well, you know, if the opposition would only let this go through, things would be all healed up and better."

What a crock that is, because that is called jumping from the frying pan into the fire. You have got a scheme here that is going to take away big chunks of compensation from victims, especially innocent victims, make big profits for the auto insurance industry, which of course pays Liberal members and their party big contributions at election time, and leave the driver and, more important, the sad, innocent victim hanging out to dry.

Mrs Butterworth: Sir, I voted for the Liberal government thinking, perhaps naïvely, that it would protect me through insurance.

Mr Kormos: You sent them a strong message today. Get your name and neighbours to send the same sort of message. That is important. Thank you for coming.

Ms Oddie Munro: Thank you very much for making your presentation today. I certainly hope that your family is in good health. I appreciate your taking the time to come here because I know it will always be with you. It is a very emotional thing.

Under the current insurance plans, there are many people in Ontario who do not receive any rehab benefits or medical benefits or long-term care, and I would like to think that is an improvement in this particular plan.

As well, I certainly appreciate your concerns that psychological damage and trauma are important parts of being a whole person. I think in the regulations or the schedule of benefits, and indeed in the wording of the right to sue, there is consideration for psychological manifestation.

In addition, on the rehab side, as far as the no-fault is concerned, I think that it recognizes that family members also have a need for

psychological counselling and rehab. What I do not know is the length of time that is allowed in order for a claim to be filed. That is one of the questions. Could someone enlighten me as to the length of time? She had a baby. Then would she have been able to wait under this proposed plan for how long before she claims for psychological—

Mr Ferraro: To access the rehabilitation and the income replacement? For the income replacement, it is 10 days. For the rehabilitation and supplementary medical care, it is 30 days.

Ms Oddie Munro: Yes, but she had a baby in the interim and so the rehab that she asked for was limited, and it was after having the baby. Now, if the medical team deemed that it was—I guess what she is asking and what I am asking is, what happens there? Is there a period of time where she can have—

Mr Ferraro: In the event that she required access to the \$1 million in supplementary medical care and rehabilitation care? As soon as their medical advisers say they can go for it, they can go for it. Are you asking me if there is a state of limitations?

Ms Oddie Munro: Yes.

Mr Ferraro: It is the same as—maybe Mr Endicott can correct me. It is two years, I believe.

Interjections.

Mr Ferraro: It is the same as the Highway Traffic Act?

Mrs Butterworth: Psychological injuries do not happen immediately after a car accident.

Mr Ferraro: I understand that.

Interjection: We are trying to get an answer for you.

Ms Oddie Munro: But you have two years in which to—in your case, did you start to realize you had a psychological injury within two years?

Mrs Butterworth: No, we started the proceedings for the physical injury, so it was covered then.

Ms Oddie Munro: But not the psychological.

Mrs Butterworth: There was no psychological injury until six months later. It did not manifest until six months later.

Ms Oddie Munro: It would still be within two years.

Mr Ferraro: A two-year period.

The Chair: Mr Runciman.

Ms Oddie Munro: —inform the claimant very strongly—

The Chair: I appreciate that, but we have time considerations and I have to be fair to everyone.

Mr Runciman: I guess I do not appreciate that. I have heard that on and on, ad nauseam. We have witnesses like this lady who come before us and outline their own experiences and, as I have said, witnesses like yourself earlier who have no vested interest and have nothing to gain. You have gone through this experience and you are trying to make a contribution to the deliberations of this committee, and that is the sort of thing we hear all the time, where there is really no recognition of what you have said to us and the message that you are trying to deliver to us.

I guess I have to echo what Mr Kormos said in the sense that at the outset of these hearings I tried to appeal to the Liberal backbenchers, and just what you have seen here in terms of questioning shows that that appeal, the kind of testimony you are making here and others have made before you, is not having any impact. I do not know what the alternative is. To prominent Liberals who have appeared before us I have said they should start working at the grass roots of the Liberal Party and through the associations of the Liberal Party to try to impact on it, because these people here are following direction from the leadership of their party. They are not following, they are not listening and they are not going to do the job that they should be doing on this committee representing the interests of Ontarians. That is the conclusion of us listening to the reactions and listening to the comments you just had posed by Mrs Oddie Munro.

1520

Mr Runciman: I simply want to say I echo Mr Kormos in perhaps getting out there and trying to work with the grass roots of the Liberal Party and trying to put pressure on the leadership of the party because we are not going to have an impact on these people until the leader tells them what to do.

Mrs Butterworth: It might have an impact when the next election comes around.

The Chair: Thank you very much for your presentation.

Byron Dale and Ester Gomez, the clerk has circulated copies of your brief. We have 15 minutes. If in that time you could leave us some time for some questions, comments and discussion, we would appreciate that. Identify yourself for Hansard and then please proceed.

BYRON DALE AND ESTER GOMEZ

Mr Dale: My name is Byron Dale. I am a businessman from Oakville presently working

with the law firm Gluckstein, Neinstein in Toronto as a litigation assistant. In order to bring to the committee's attention, I have asked one of our clients to address you briefly, to give you testimony similar to that which I have heard as a member of the audience.

My background is that I am a retired regional general claims manager from Via Rail. I did many years with Air Canada and with Canadian National Railways. I have been in the defence and also now actively engaged in litigation. I understand the issue of personal injury from both general perspectives.

Mr Ferraro, I bring you a message from Bernie Gluckstein. Apparently in Windsor at a recent meeting, the comment was made that he is fully in favour of Bill 68 as proposed.

Mr Ferraro: He made the comment?

Mr Dale: No, I understand you made a comment. I have not Hansard to back that up, but this is what I am informed.

Mr Ferraro: Could I just interrupt for a minute? Again, I may have made the comment, but to be perfectly honest with you, I do not know Mr Gluckstein and I cannot substantiate or deny it because I do not even know the man.

Mr Kormos: Somebody took a shot at him, you know that.

Mr Ferraro: I say that in all sincerity.

Mr Dale: In any case, if I may, there are many of us who do not support the legislation as proposed, and the gentleman of whom I spoke has asked to go on the record or be put on the record as opposing it as proposed.

The enhanced benefits, many of them, are in fact long overdue. However, the threshold is what is worrisome. There are other aspects of it. The no-fault benefits that came into effect in 1969 have not been delivered as promised under contract in many cases. Claimants have been denied rightful rehabilitation.

You have heard it through the mouths of many of our citizens in Ontario that they have not been able to get back to work. Their lives have been disrupted. There have been a number of things happen that are most unpleasant. I would ask that if any of you want to determine—you have seen it here but come and sit with me when I interview people who have been the subject and the victim of an accident. The victimization just starts at the impact. It carries on, for many people, for the rest of their lives or until they are dead, and sometimes prematurely so.

The delivering of the no-fault benefits to the people who are entitled to them under contract is

in many cases denied to them, in some cases by zealous insurance adjusters. In many cases, the insurance companies take a very adversarial stand in the section B benefits against their own people. I have a case here in point—I really will not identify it further—where a general practitioner, rather than stick with the issues of the medical problem, has criticized the various specialists—the orthopaedic specialists, the psychiatrists, the psychologists and other very competent people. But he is hired by the insurance company and his reports do not support the requirement for rehabilitation. I ask a question: How is it possible that someone who does not have similar or equal qualifications, how then can that person criticize and veto that which the experts are talking about?

Even Justice Coulter Osborne indicated that the delivering of the accident benefits which are due to these people up to now has been abysmal. From what I have before me here today, I cannot see that it is going to change. Quite honestly, I cannot see it, but I hope that it would. We are handling approximately 300 cases where the insurance companies have said, "No, your people cannot have rehabilitation."

I just want to mention to you, gentlemen and ladies, something about a human being, and we are all human beings. The proposed legislation, if I may use an analogy, tends to go inside an onion and take out the centre. We are layer after layer after layer. We are physical, we are emotional, there are social components. For the proposed legislation to deal only with the physical—I cannot understand it.

I have seen people come into our practice, in many cases referred by other lawyers, with their lives disintegrating before them. There are many success stories but there are many failures because the required benefits have not been delivered and are being thwarted, and until there is a vigorous change in many aspects of the legislation, the people will continue to be victimized.

I would like to turn the remainder of the time over to a young lady whose story will speak for itself. May I at this time thank you.

Ms Gomez: My name is Ester Gomez. I am thankful for your giving me the opportunity to talk.

What I am about to say bears a great deal of importance to the imperfection of the no-fault insurance policy. The personal experience that I am about to share with you will strip away the bureaucratic camouflage to which this policy is subject.

My fulfilled life ended suddenly a little over a year ago, on a dark cold 15 October, when an oncoming vehicle aimed its way in my direction. The impact of these two masses of moving metal left me in a cold silence and completely helpless.

I cannot begin to make you feel the burning pain that shot through my now crippled body. Apart from my continuing on and off back pains, the imprinted images and memories of this dramatic event still strain my mind and my dreams. The pain does not stop at the sore muscles, it does not stop at the ongoing headaches and it does not stop at the back pains. I pray it would stop at the memories and at the flashing images and end at the violation of my dreams.

I am not a minority to this event. Bear in mind that my experience is not shared by few but by many. If you could imagine a friend or a sister of yours driving down a familiar street in her neighbourhood and, as she goes through an intersection which so many times in the past she has gone through, she is struck by an immense force that causes her Jeep to roll. Each individual who experiences an accident similar to mine becomes a victim and will continue to suffer unless appropriate aid is given to her.

1530

In the hospital I was disoriented, confused and was left alone in the hallways for hours as questions entered my mind of the whereabouts of my friends and the fear of the outcome of the expansion of my head.

In a great catastrophe one only experiences shock, which surpasses any other feelings or emotions. It is shock that buffers pain, for the pain came the next day. It was not merely physical; it was also emotional. I almost lost a nerve on a finger but actually broke it and received stitches. I had a minor head injury. My left eye and the left side of my face were completely swollen. I had difficulty eating. I was unable to move in or out of bed. I could not even go to the washroom without assistance. My worst pain came from my shoulder. Ironically, my safety belt was causing me the worst pain. I had back and neck pain and was on morphine to ameliorate the pain.

Before the accident I could maintain a B-plus average. Yet I am currently enrolled at the University of Toronto and I am having difficulties. I am no longer engaged. My relationship with my family and friends has changed. I lost a lot of self-esteem.

One can try to imagine that all of these aforementioned injuries, both physical and men-

tal, could not be and will not be recognized by an insurance company, yet they are real.

The insurance company that protected the individual who hit me was the same as my own. At one time I was badgered to a point where I almost dropped the case. There were insinuations from others that my pain was malingering, but my own family physician missed that most important minor head injury and told me my problem was psychological. My lawyer started me on the road to recovery. Yet other physicians, neurologists, physiotherapists, psychiatrists, and rehabilitation counsellors all testify to the realness of my pain and suffering at an emotional and at a physical level.

All of these professionals aided me in my recovery. It was through rehabilitation, which my lawyers had suggested, that I learned to manage my pain and come to terms with it. It was not the insurance company that encouraged rehabilitation. It was only eight months after the accident that the insurance company began to co-operate with me, after I saw its independent doctor.

When the time came for the individual who hit me to be charged for his offence, I was subpoenaed as a witness. It was an entire year after my accident that I had waited for the date of justice. I gave my honest testimony but had difficulties in recollecting certain parts, as I have had difficulties in memory retrieval since the accident. Yet after my testimony I was left to feel incompetent and an imbecile. Three witnesses, who had not testified to the police officer at the scene of the accident, testified on that day on behalf of the individual who hit me. The constable showed up late and was unable to give his testimony.

It was over. The justice of the peace dismissed the case on the grounds of insufficient evidence. The case was dismissed because it was not real. Again, the pain, the anger and the frustration surfaced. Tearfully I asked, "Why are criminals protected and the victims continue to be victimized?"

It has been a little over one year from the time of my accident. I am still coping with it. My lawyers have not ignored me and are the only ones who provide me with the strength to fight this injustice. I have otherwise been largely, if not totally, ignored, swept aside by everyone as if my accident was not important. If this occurs to anyone else, he will realize how real it is. One does not want to be a victim four or five times.

This did not happen to my physical body; it happened to all of me. My physiological and my

psychological wellbeing have suffered. But to draw the line at the physical is to ignore all that has happened to me. If this new act comes into effect, people who have an accident similar to or worse than mine, who suffer real emotional and physical pain, will not be compensated. You pay for insurance to protect you, yet by drawing the line at the physical level there is no real protection. Your solution should not be to further victimize the victim.

Mr Kormos: Now, Mr Dale, this is the last hour and a half of the last day of the last week of hearing from the public about this. I have got to tell you, we had to fight tooth and nail to get the Liberals to even agree to public committee hearings. They wanted to ram this legislation through before 21 December of last year. The insurance companies want this legislation real bad because they are looking at dollar signs. It is not the visions of sugar plums; it is the visions of hard cold cash, millions and millions of dollars of cash; your money, money coming out of the pockets of drivers and victims.

With but a few exceptions, by and large it has been the insurance industry and the brokers which have come before this committee praising the legislation. Virtually everybody else, teachers and their associations, police officers and their associations, trade unionists of all stripes and ilk, nurses, medical rehabilitation people, doctors, lawyers, therapists, head injury association people and victims have come to this committee saying: "This is bad legislation. It shouldn't be passed. It is only designed to make big profits for the insurance industry."

I am concerned, because when I was in Ottawa yesterday I spoke to some people out in the foyer who said that they had wanted to make submissions, including among them the Ottawa labour council. That represents a big chunk of people in the Ottawa area, and they were told that there was no time, that they were not going to be permitted to make submissions, they were not going to be permitted to participate in what most of us regard as a pretty traditional democratic process. I understand you had some difficulties getting before this committee. I wonder if you would tell us about those.

Mr Dale: I do not want to misquote the gentleman with whom I spoke on the phone on the day of the deadline, but he made me believe that the committee did not want to hear from people opposed to the legislation. I shot back to him, "Are you telling me there's no room for dissent?" He said, "No, I'm not saying that to

you; I'm only saying to you that we do not have much time." But I am here.

Mr J. B. Nixon: To both of you, I would like to thank you for coming before us today. Ms Gomez, your case is obviously a very serious one and very troubling, I think, for all of us. One of the troubling things about it was the inability in the criminal courts to prove that the other driver was at fault and to obtain a conviction under the Highway Traffic Act. So we have a situation where, certainly for the purposes of the Highway Traffic Act, it has not been established that anyone is at fault so far. That is what I am led to believe by the presentation.

That points to all the troubles that people have when they go into the courtroom and they know they are right, but it is tough sometimes to prove they are right and prove that someone else was wrong and at fault, which is something that troubles all of us. That is why we have decided, for instance, to increase and establish new no-fault benefits in this bill, so that regardless of whether or not someone else is at fault they would be entitled to those new or expanded benefits.

I should let you know that we have had several victims of traffic accidents come before this committee who said that under the new bill they would be much better off because they would have access to these no-fault benefits, they would not have to wait until the conclusion of a trial where hopefully they would prove someone else was at fault. So I thank you for coming and I thank you for talking to us about your experiences. I appreciate it.

The Chair: Mr Clothier, the clerk has distributed copies of your presentation. The next 15 minutes are yours. If you could leave us some time for some questions, comments and discussion we would appreciate it. Identify yourself for the benefit of Hansard and please proceed.

WILLIAM G. CLOTHIER

Mr Clothier: My name is William Clothier. I am a chartered accountant in London, Ontario. I come to you as three persons in one. One person is someone who has seen and dealt with victims of accidents and tried to establish the degree of loss that they have suffered. I come to you also as a person who has been involved in a traffic accident, and fortunately was not injured badly but still received a small amount from the insurance company. I come to you, third, as a self-employed businessman, much like the people whom I encounter in my practice. I want to say that only about 30 per cent of my practice

involves dealings with people who are involved in personal injury accidents involving automobiles. I have some commentary here, along with three sample schedules with explanations.

My comments are restricted to the effect of the proposed legislation on the operators of small businesses and professional practices. It is generally necessary to analyse an entrepreneur's financial records and to prepare projections and calculations of the expected and potential income and then to determine from that, as best you can, an estimate of the losses that have been suffered or are expected to continue.

1540

This proposed legislation restricts the payment of loss of income in many cases in which there is not serious and permanent injury or death. The payments will apparently be for only 80 per cent of the weekly income, up to a total of \$450 per week, during the period of the injury. There seem to be a number of problems that I have isolated, thinking back to my own examples with the businessmen I deal with, not only the ones who were injured but others, that I think are worth pointing out.

The first thing revolves around the question of what is income for the purposes of this legislation. When I think of income for a small business or a professional practice, I think of the net profit after all the expenses have been deducted from the revenue that the business has generated.

The current level of income for many small businesses is not always readily discernible immediately after the accident. Many businesses do not have the kind of financial information that can throw this number out instantly; they may have to wait until their year-end financial statements have been prepared. That may be months or even over a year later.

Even if they do know the current level of their net income, it happens that sometimes incomes vary from month to month. Do we take the most recent amount as being the applicable amount of income that this person has lost? What about a store that has a slow period right after Christmas, if the injury occurs in February, for example, when it is not very busy?

Do we also mean by income the drawings, if it is a partnership or a proprietorship; that is, the money that that person is taking out of the business, or the salary, if he operates through a corporation? A small business may be earning substantially more net income than the owner is actually withdrawing to cover his living expenses. The owner-operator who is injured

may be losing far more income than is apparent from his wages or drawings.

I have shown this as an example in example 1, Small Business Ltd. Here we see that as a result of an accident, the owner is temporarily unable to manage the business and maintain customer contacts. As a result, his sales fall by 50 per cent. Even though he has cut back his expenses—I show a reduction in wages from \$35,000 to \$25,000 in my example—he still had a substantial drop in income. His net income has fallen from \$60,000 a year to \$7,500.

The loss payment by the insurer under the present system is clearly substantially higher than under the proposed system. This business operator is penalized because the setback in his business was the result of an auto accident instead of some other reason, like a decline in the economy. Under the present system, in my example this person has lost \$52,500. What he would have made without the accident is \$60,000 and it shows the \$7,500 that he actually made.

Under the new system he might only get nil, because he still paid himself the \$15,000 wage that he was being paid in the past. Maybe a wage would be the basis of the determination of his lost income. In any case, even if it turns out to be his actual loss of income, instead of getting the \$52,500, he will be restricted to \$23,400, since that is the maximum amount.

The second thing is the effect on growing businesses. Many enterprises and professionals start small and gradually increase revenues in the first year. A new physician who has just started his practice may have a relatively low net income until his patient base has been established. If he is injured but his injuries are not permanent, he may lose whatever patient base he has had and he may have to restart. No recognition is given for this under the proposals.

In my example 2 I show what happens here to Doctor Who, who starts the first year at \$40,000 in revenue and gradually increases to \$160,000 in the fifth year of his practice. His net income also starts at nil but gradually rises.

If he has an accident at the end of the first year and he cannot generate any income in the second year because of his injuries but gets back to it in the third year, he has to start over from scratch. His patients have all gone somewhere else, or a lot of them have. He has to rebuild and he gradually gets up to the plateau level. As a result, he has a loss of income of \$229,000 stretched over the three years in my example, from 1991 to 1993.

What is the loss of income of this person? Under the present rules, it is \$229,000. Under the new system, perhaps the insurance company would say it is nothing because he was only breaking even in the first year; he was not operating a profitable business. If they agree that he was on the verge of being profitable, they still might limit him to only \$23,400, the amount that is the maximum for the year that he is not working.

I come from London, which is an area surrounded by farmers, and there are thousands and thousands of farmers in the London area. These people have unusual income calculations for income tax purposes that are not like other taxpayers'. They report only the income that they actually receive in cash and they deduct only the payments they actually make to their suppliers. This is acceptable for income tax, but it does not give a clear picture of their true net income that would be useful for the purpose of establishing what losses they have.

For example, a livestock farmer who was increasing the size of his herd might purchase additional cattle just before the end of the year, with the result that he will end up with a loss, or a cash crop farmer may withhold some of his crop from the market until shortly after the end of the year in order to improve his position.

In example 3 I have shown you the example of this, and this may be the only information available to be given to the insurance company to establish whether there is a loss of income. On a cash basis, in the first year, in the year before the accident, he has a loss of \$25,000 because he had not yet received payment for all of his crop. He held some of it back. He sells it in the second year. But if you had counted that extra crop as what he really generates in a year from growing crops on his farm, he would have had a profit of \$75,000.

The year after the accident, when he cannot grow anything at all because he is in hospital, he sells the remaining crop. He still has a lot of his expenses. He still has interest on his mortgage, it is a fixed cost that he will still continue to have, and he ends up with a further net loss of \$75,000. But if you had taken into account the fact that some of that grain was sold the year before, he has a loss of \$175,000. So his total loss as a result of the accident, assuming that it is all related to the accident, is \$250,000.

Under the new system it might be argued that he has no loss, since he lost money in both years if you look at the tax returns, or in any case the maximum would be \$23,400, since that was all it

would call for under the maximum part of the legislation.

Fourth, I want to make my comments on disability insurance, since I carry this type of coverage personally. This is primarily carried, in my view, in order to ensure one's income in the case of health problems such as heart attacks, cancer or other illnesses. Most people, I think, do not regard this type of insurance as primarily associated with protecting themselves from the loss of income as a result of an automobile accident.

Under the proposed plan, if you have disability insurance, then you would not receive anything from the automobile company as long as it was over the \$450 a month. This is unfair, in my opinion, because in effect it makes the payment for no-fault insurance a waste of money.

The size of these benefits is also too small. I think many people are unwilling to purchase supplementary disability insurance because it is expensive; I found in my experience it is not tax deductible; it represents a large increase in the cost of insurance for a person; and in fact in some cases it may not be possible to obtain for health or age reasons.

These are some comments I have on the insurance proposals.

Mr Philip: Many of the small business people I have been associated with actually take home less pay in terms of salary than do their employees. The reason for it is what they see in the future, as a result of what used to be called goodwill. I do not know whether they still use that in business circles nowadays, a building up of customers and general recognition of the business or whatever. The increasing of fixed assets and perhaps the paying down of principal on loans is what they are most interested in.

Under this bill, would the paying down of principal on loans be considered an income, and would that be rolled into the salary for the calculation, or is this simply lost, as far as you are concerned?

Mr Clothier: I have no idea how it will actually be applied when it is put into place. I agree with you that in many cases people do restrict the amount of income they take out of their businesses in a year, and it may be difficult to establish exactly what the level is that they really do have. That is why I said in my examples that it could be one or it could be the other. Perhaps the insurance company might argue that the claim would be limited to that small amount that the person has been taking out, or it might be willing to look at a larger amount to give some

recognition to the fact that more money was being piled back into the business, but in that case, I think your biggest problem is that you will run over the \$450-a-week limit quite quickly.

Mr Philip: So either way, you lose.

Mr Clothier: I think so.

Mr J. B. Nixon: Thank you for appearing today. Would you agree with me that the task of predicting future income streams is not an exact science?

Mr Clothier: Yes.

1550

Mr J. B. Nixon: Having agreed on that, do you think it would be possible, rather than forcing this type of issue to a courtroom assessment of damages and battles between accountants and actuaries and so on, to devise a formula, a fairly standard formula, I would think, that would require an examination of revenues and expenses to determine a bottom line for a business under our no-fault section?

Mr Clothier: It might be possible, although any time you start developing rigid formulas, you are inevitably going to have problems with something that is outside of the formula unfairly.

Mr J. B. Nixon: I understand that. One of the problems you have in the courtroom, of course, is that a lot of evidence is excluded, in the view of the litigants, not the lawyers, often unfairly too.

Mr Clothier: Yes.

The Chair: Thank you very much for your presentation.

Before we call the next witness, Mr Endicott has a point of clarification around the issue that Ms Oddie Munro raised, I think two or three witnesses ago. Mr Endicott or Mr Ferraro.

Mr Ferraro: I will let Mr Endicott do this.

Mr Endicott: The issue was whether somebody would be entitled to claim the rehabilitation and medical benefits if the manifestation of the injury arose in a period six months after the accident. I would like to draw to the attention of the committee and other people listening section 20 of the proposed no-fault benefit regulation, which actually puts an initial requirement of giving written notice of the claim within 30 days of the accident and filing proof of the claim within 90 days, but then there is a separate section, subsection 2, which says,

"A failure to comply with a time limit set out in subsection 1 does not invalidate a claim if it is shown that compliance was not reasonably possible and so long as there is compliance within two years of the accident."

In the example that we heard before us, obviously, if there is no manifestation of the injury until six months after the accident, it is not reasonably possible to file a claim. So the effective period for the filing of a claim is two years.

The Chair: Mr Ferri, the clerk has distributed copies of your presentation. You have 15 minutes. If you would identify yourself and leave us some time for questions and comments, we would appreciate that. Please be seated and proceed.

M. J. FERRI

Mr Ferri: My name is Mac Ferri. Both my wife and I have different vehicles and we are quite satisfied with our premiums. Of course, we have not had problems, accidents or convictions for probably 25 or 30 years, so our rates are comfortable, you might say, but I am concerned about the young people and new drivers who require the use of their vehicles to get to and from their jobs. My comments are not exactly personal but to the boards, concerning the way the government is trying to implement the insurance on drivers. You have a copy of my comments and I will read what you have.

The Peterson government reports that it has just about finished the work that it was elected to do in 1987. If we read of the horror stories reported in the Toronto Star concerning the experiences that some drivers have had in renewing their policies, we might say that the mess has not improved since Mr Kruger and the Ontario Automobile Insurance Board began their hearings. More than a year ago, Mr Kruger reported that the insurance companies were hiding \$700 million. The question has not been answered yet as to where they are hiding that money and Mr Peterson has given them a few more hundred million to hide.

It is beyond reason as to how much trust the Conservative government has in these corporations, even though the actuaries questioned at the 1988 hearings based their increases for the insurance industry without having complete information. This was revealed under Mr Campion's questioning the actuaries. If I am not mistaken, although I have my suspicions, not even the government is allowed to scrutinize their data.

At the same hearing, Mercer, the consultants, advised the board that the insurance companies should have about a 40 per cent increase. As incredible as it may seem, the Mercer consultants and Marsh and McLennan, the insurance corpo-

ration, have the same office and same phone number in Don Mills.

This brings to mind the story of a 69-year-old driver who had his insurance with Scottish and York cancelled and transferred to Victoria with an increase of 21.6 per cent. Both companies have the same office and phone, and to add insult to injury, after rejecting Victoria's policy he received a bill for \$119 for cancelling. The 69-year-old driver's comments were, "Scottish and York has clearly outwitted the government and its cap." Insurance companies have learned the ruse of double-dealing.

Insurance executives wine and dine with a few government MPPs by invitation of the corporations, and their contributions for election expenses are gratefully accepted. In a 1987 newscast from the United States, Tom Brokaw reported an increase of \$11 billion dollars for the insurance industry since 1985.

Why has the government of Mr Peterson wasted millions of dollars of taxpayers' money on this hearing? It has cost the people appearing here time and money just to make it seem that their voice and ideas are being heard, when actually Mr Elston and the insurance industry are in complete agreement and have already made a decision. Is it not amazing how this great American friend, Ralph Nader, should bother to take up his time to stand up for the rights of Canadian people when our own Premier and most MPPs are only concerned about themselves?

"When undisciplined government and greedy corporations or individuals join forces, then we have economic corruption."

At that point I had run out of paper, trying to save paper because of the Toronto garbage problem, and I had a further remark to make. Further to what you have a copy of, I want to say that this government is ignoring the economic violence that these corporations are adding to by imposing insurance fees of \$2,500 or more on new drivers, and for drivers without an accident or conviction. You had better not have even a minor accident or you are almost without insurance.

1600

Automobile licensing should be a service for the people who buy these cars, to enable them to earn a living, for the majority of the driving public. Licensing should be done by the government and not by corporations for the purpose of insatiable greed.

My intention is not to mention one corporation in particular, but since my information comes

from newspapers, I relate a story in a Tampa, Florida newspaper that says that Prudential has revenues of \$21 million a day which it had to find a place for. In this instance, it said that some of this money was being loaned at three to five per cent to corporations building offices in Tampa.

At the same time, I want to relate that when Tommy Douglas became Premier of Saskatchewan, Prudential had \$6 million in government loans that it promptly recalled because—I am not sure whether it was a Liberal or Conservative government that had lost out. Despite the promise of the new government that this loan would be repaid in full, the CCF could not be trusted. The Saskatchewan government was left with a \$15,000 loan deposited by a wealthy member of the party to start the business of governing.

The Chair: I know Mr Runciman would want me to correct something for the record. In line 12 of your typewritten page you say, "It is beyond reason as to how much trust the Conservative government has in these corporations." I am assuming you meant the Liberal government, or I will let you clarify that.

Mr Ferri: Where is that?

The Chair: In the 12th line of your typewritten page.

Mr Ferri: The start of the page?

The Chair: Your first page. It is the 12th line down. The sentence starts, "It is beyond reason as to how much trust." I will let you tell me what it should be.

Mr Ferraro: We will all wait with bated breath.

Mr Ferri: Apparently it is "Conservative" government.

Mr Ferraro: Absolutely.

Mr Ferri: Oh, sorry, that is an error. It is Liberal.

The Chair: Thank you very much. I know Mr Runciman would like that corrected for the record.

Mr Ferri: It is hard to identify these two parties.

The Chair: Maybe you were writing it on another matter, but anyway, the word processor stuck on that. That is fine. Mr Philip, up to two minutes.

Mr Philip: But Tommy Douglas did beat both a Liberal government and a Conservative government. He also ran a balanced budget, which is something the Liberals and Conservatives have never done in this province, but then he did not

give away \$163 million to private insurance companies.

You bring up the matter of Scottish and York. You say, "Scottish and York has clearly outwitted the government and its cap." For a minute I thought there was a typing error there, but I guess you did mean "cap."

Interestingly enough, the insurance companies do not even need the sister company now. What we are running across, and I could name a fairly large company in Ontario that is pulling this, is that they are threatening to cancel the insurance, and when the person pleads to have the insurance reinstated, they say, "We'll do it if you pay three times the premium." So they do not even need this shell game of sister and parent companies that Scottish and York has been pulling.

Mr Ferri: Are you saying they do not need this part of the business?

Mr Philip: No, I am saying they are tripling their premiums just by threatening to cancel insurance. When they cancel somebody's insurance, they go back to the insured and say, "All right, we'll give in if you agree to triple the premium that you've been paying." So they do not even need this shell game, and the Liberal government is letting them get away with it.

My question to you is this: We have had evidence this morning from the government's own figures that you have a transfer by this bill of over \$800 million in lessened benefits, thanks to the Peterson government. You have \$163 million in tax giveaways. You are pretty good at addition. That adds up to close to \$1 billion which the Liberals are giving to the insurance companies with this. Do you feel, as they would lead us to believe, that by giving all of this to the insurance companies, close to \$1 billion out of our pockets, you are actually going to end up with lower premiums next year?

Mr Ferri: No, I do not. They will still want more.

The Chair: Thank you very much for your presentation. You asked some very interesting questions.

Mr Nixon, you had two minutes? Mr Ferri, do not leave. We have one more question from Mr Nixon.

Mr J. B. Nixon: I will pass. It is okay.

The Chair: Dr Cameron, the clerk has distributed copies of your presentation. You have 15 minutes, if you could leave us some time for some questions and comments, we would appreciate it, even though you have been in the

audience enough to know how the routine works. Please proceed.

DR HOWARD S. CAMERON

Dr Cameron: You noticed me, did you?

The Chair: That is correct.

Dr Cameron: I am Dr Howard Cameron. I am from London, Ontario. I am an orthopaedic surgeon. I have been an active orthopaedic surgeon for over 25 years. I did work for the compensation board at the London regional office for approximately three and a half years as a medical adviser and surgical consultant. In the last four years I have done medical-legal consulting work, seeing accident victims for lawyers and for insurance companies. So I feel I have had a fair amount of experience dealing with people who have sustained injuries from automobile accidents.

I also feel I am part of the silent majority, because this is the first time I have ever got off my butt and done anything about something, and I admired Mr Hill, for example, today when he got up and said his piece.

I would like to be brief. I would like to compliment the chairman on running the meeting on time. I have never been at a medical meeting that was ahead of time at this stage of the game.

I have five reasons for feeling this legislation is unfair.

First, there is no recompense for pain and suffering. As I said, I have been a practising orthopaedic surgeon for almost 35 years, and pain and the accompanying suffering is a genuine complication following an accident or an injury. The innocent victim deserves some recompense and it is thus grossly unfair to disallow some effort at compensation.

Second, there is no recognition of psychological or emotional injury. Physical pain is a direct result of most automobile accidents, and although response to pain varies in most individuals, a constant, unremitting pain that often is compounded by headaches can give rise to emotional problems. These can be anxiety, depression, tension, frustration, discouragement, etc, and to ignore these psychological problems, or in some cases accident-induced psychiatric responses, I do not think is being realistic or fair to the innocent victim.

Third, loss of income will not, in many cases, be adequately compensated. Loss of income, with no hope of ever fully recovering it, can have a devastating effect on the innocent victim.

I give an example here of a family that was out coming back from Grand Bend on an innocent

Sunday outing and was clobbered by a man who came through an intersection. You have heard this scenario many times this morning, and I am sure many times during your inquiry. But he ends up unable to work and this is devastating for him. It is a travesty. He develops a psychological problem because he is not able to get enough money to adequately look after his family.

He will not be adequately compensated by this program. Also, some times, the person who was the perpetrator of the accident will be recompensed at the same rate. This compounds the psychological effect. A persons says, "This was not my fault, and yet I get exactly the same as the other chap."

Fourth, the determination of the threshold: I think that is going to be extremely difficult to interpret. I said here that I feel that many of the judiciary are certainly sharp—I have always been impressed with their ability to deal with medical problems—but I think this is going to be extremely difficult to interpret.

I got racked up eight or nine years ago from a rear-end accident. I must confess I have been much more sympathetic since it occurred to me, and I honestly think I am a stoical citizen of the community, but I do not think I could hack it on the line at Ford or someplace like that if you took 20 years off my life. I have seen so many of these people who by the end of the week are beat. Also, they do not do overtime any more, which they did before.

1610

Finally, I foresee administration and adjudication problems arising. The insurer is required to make payment "for necessary goods and services, whether medical or nonmedical in nature, for the care of the insured person." I can visualize some reluctance on the part of the insurer when, for example, home care or homemaker services are carried on for some weeks. I see this in my practice all the time.

In case of a dispute concerning reasonableness of certain expenses, the insurer is still required to pay the expense pending resolution of the dispute. Who does the resolving? Will the insured have to pay back in some instances?

Without too much foresight, one can predict a bureaucratic appeal board or review board or some such tribunal having to be established. I am familiar with this, again, at the compensation board. Many of the decisions have to go through various levels of appeal, and this could be for simple things like a back support. Also, at the compensation board the adjudicators are all trained under one program. They are familiar

with the rules and regulations and they work under more or less one roof. Here you are going to have hundreds of insurance companies with their insurance adjudicators, and I am sure there is going to be so many varied interpretations of the regulations that the insured person is going to suffer.

The insurer also will periodically want a medical review by an independent examiner. If that opinion regarding disability differs from the opinion of the insured's physician, how will the impasse be arbitrated? Another tribunal, another appeal board, more bureaucracy.

Finally, I would just like to recapitulate: There is no recompense for pain and suffering; there is no recognition for psychological or emotional injury; loss of income is not, in many cases, adequately compensated; determination of threshold is unclear; and administration and adjudication problems are bound to develop. I feel the act is unjust, unclear and unfair.

I think it is probably unfair of me to beat my gums about this, being critical without perhaps making some suggestions for improvement. It may be better than the current adversarial system, which I am sure does have some weaknesses.

I think there should be a review of the Family Law Act, with a limit on awards to the immediate family. I would suggest eliminating double recovery; increased penalties for the impaired driver, the reckless driver or the accident-prone driver; and this has a prophylactic basis, better training and some responsibility for adjusters—I find that often the adjuster just cannot make a decision—so that claims could be settled much more expeditiously. I think there should be a time moratorium to settle claims unless there are some drastically extenuating circumstances.

I would suggest also that lawyers' fees probably should be looked into, and regulation of doctors' fees, perhaps, for reports that they submit. There should be reasonable interest rates on settlement amounts. I would suggest also the elimination of frivolous claims for house and automobile adjustments. I see all sorts of things where cupboards should be changed every eight years because a person might move and things like that. I think some of these things are ridiculous when they are put in a claim.

I would like to thank you very much for tolerating me.

Mr Runciman: Thank you, doctor, for appearing. I share your views and I like most of your suggestions. In respect to reform of the current system, they could achieve the kinds of

efficiencies that could see a moderation in rates and not do what this government is doing in throwing the baby out with the bathwater.

As a doctor, you are saying perhaps doctors' fees in respect to auto accidents could be looked at, or surgeons', etc. We also had the lawyers' representative, I guess through the Committee for Fair Action in Insurance Reform, saying: "Look, that's another element. We felt that lawyers' fees as well should be looked at and perhaps regulated in this area." But again, those are the sorts of things that the government, for whatever reasons, has failed to look at.

I guess I am just curious about one thing. We have had a number of doctors appear before us, specialists such as yourself and other family doctors, but the medical organization, the OMA—I think those are the right initials, are they not—

Dr Cameron: Yes, you are correct.

Mr Runciman: —has not taken a position on this. I do not know if there are other branches of professional organizations, perhaps for orthopaedic surgeons, or if you all follow that one umbrella group. I am curious as to why they have not, or if you have any knowledge of why they have not, taken a position on this. Is it for political reasons? Obviously it does not just affect the surgeons or orthopaedic consultants like yourself, it is going to have an impact on family doctors and others in the medical profession. I am kind of curious as to whether you have any knowledge or even an opinion on why we have not heard from the OMA.

Dr Cameron: I really cannot answer your question. I think perhaps many of them are like I was, apathetic. We took a beating previously. The doctors have been tongue-lashed for a long period of time. Perhaps this might be behind it. I really cannot answer your question in any—

Mr Runciman: It is one of the reasons that doctors perhaps do not have the high esteem among the public that they once had, because you are right. They did demonstrate vigorously when their incomes were at stake, but when we are talking about perhaps the incomes of future innocent accident victims, we are not seeing the widespread concern being expressed by that particular profession. Individual professionals like yourself have been doing that, but I regret that the body that represents doctors right across this province has not taken a position.

Mr J. B. Nixon: Thank you, Dr Cameron, for appearing before us. I am troubled by your testimony. Let me explain why. I appreciate you

taking the time; I appreciate your coming here and making the presentation to us. You have a very distinguished professional career and a distinguished service record during the war.

Dr Cameron: I am always a little bit leery when people build me up like this.

Mr J. B. Nixon: Well, wait for it.

Dr Cameron: I figure the rug is going to come out from under.

Mr J. B. Nixon: What you are facing is the same problem that we are facing and—I will be personal—I am facing. A lot of people are saying a lot of things about this legislation. A lot of people have views about taking away the right to sue, taking away the right to compensation, so on and so forth.

But, for instance, you say there is no recognition of psychological or emotional injury. That is just not the case. In the no-fault benefits there is extensive recognition of psychological and emotional injury.

The second thing you say is that loss of income will not, in many cases, be adequately compensated. You cite a case of a family of six returning from a Sunday holiday and being run into at an intersection by an impaired driver. The mother was killed, two children were seriously injured and the father sustained a back injury.

Those people cross this threshold. That family would have had a lawsuit. Not only would they have all the rights they are entitled to in law now, the rights to sue, but they would have had the expanded and new no-fault benefits, which do not just cover loss of income up to the period of trial, they cover additional rehabilitation, medical expenses and long-term care and there is clear recognition of psychological and emotional injury.

I would like you to think about the problem that we deal with when we get so many people coming to us and saying: "You're taking away this; you're taking away that. You're giving the insurance companies a billion dollars. You're all in the back pockets of this, that and the other thing." We are saying: "But that doesn't make sense. That's not what the legislation says."

I am very glad you came here today. I truly hope that you take a second look at it, because the things that you point out, in many cases, we have directly addressed. The issues you have raised suggest situations that, to my mind, will be better off under this new legislation rather than worse off. That is why I find what you are telling us troublesome, and I mean that sincerely, I mean that with the greatest respect to you. I am just

saying that there are many people in your situation.

1620

Dr Cameron: Okay. I think that perhaps in some instances what you say is true, but let's say that this gentleman who was in the car accident was an employee at Ford and making \$18 an hour and so on. He will never get back the wages that he lost unless he goes to court for that. Also, his back injury may allow him to get back to work somewhere along the way, so therefore it is not absolutely permanent, but it is permanent on the basis that I said, that he is not able to do his full week's work and he is going to miss more time, etc.

Mr J. B. Nixon: I understand that. But because there has been a death in the family, because the mother has died, all claim under her can go over the threshold. So he has the full entitlement to recover all in the courtroom. If he can prove someone else was at fault in the courtroom, he can recover his \$18. If he cannot prove anyone was at fault, he will definitely get the no-fault wage-loss component, which is upwards of \$30,000 a year, which is better than the \$7,400 he would get now.

Dr Cameron: I have to accept then, but let's say that his wife did not die and he then—no, I do not want to argue back and forth. But I feel that many of these people do not get full recompense for their wages.

Mr J. B. Nixon: At least not now.

The Chair: I am going to have to interject here. Mr Philip, two minutes.

Mr Philip: It was certainly clear this morning, from the government's own figures and from the analysis of Professor Carr, that there is a transfer of over \$800 million out of benefits and back to the insurance companies. I do not know how Mr Nixon can say that taking all that money away from the victims somehow gives them more benefits.

You talk about the psychological component, and I want to zero in on just one little aspect of that. If we look at Maslow's hierarchy of needs, I am sure you are aware that if you tinker with the lower needs, if you tinker with the bread and butter, then it affects the whole structure. Many people over the years have built up for their older years, if you want, and maybe their older working years, sickness benefits. Under this legislation, it expropriates without compensation those sick benefits. I am sure you are aware of that. If a person is injured and he has sick benefits, the sick benefits come in, not the

insurance. I ask you, if a person realizes that he is going to lose 16, 18, 20 weeks', perhaps a year's value of sick benefits, and that person is in his middle 40s, what does that do to his emotional state? Does it create psychological suffering, and will that affect their physiological and psychological recovery?

Dr Cameron: Yes, I think in some instances it would. Everybody reacts differently to these problems, but I am sure that some people, if you start taking that security away from them, are going to be unduly concerned and will develop "emotional overlay" from it. Yes, I would concur with that.

Mr Philip: I have had people who were immigrants to Canada who have a home which has gone up in value and they say they have got a money problem. I sit down with them and I can show them that actuarially, if they put a lien on their home or a mortgage on their home, they can live with some comfort for the rest of their lives, the assumption being then that it will be repaid out of their estate. You know that there is not one person I have ever found—and I have done this with maybe seven or eight or 10 of them who have asked what their options are—who wanted to do it, because you remove that security, and the stress that it creates far outweighs any physiological or monetary or immediate benefit from it.

Dr Cameron: I concur. It is a compounding effect in many people, yes.

The Chair: Doctor, thank you very much.

Mr Cloutier, from the Insurance Crime Prevention Bureau, I think the clerk has a copy of your presentation or some comments. We may not get copies circulating today, but they will be available to committee members before we start clause-by-clause next week. Could you keep your comments to under 15 minutes and allow us some time for discussion. I know you have been in the audience, so you know the routine. Please identify yourselves and proceed.

INSURANCE CRIME PREVENTION BUREAU

Mr Cloutier: My name is Jean-Claude Cloutier. I am president of the Insurance Crime Prevention Bureau. With me is Murray Swift, our senior vice-president.

We are very thankful to be allowed this opportunity to appear before you to address a topic which does not appear to have been dwelt on so far. This is based on a comment that was made by the minister when he introduced his bill, where he stated that insurance companies will also be required to develop antifraud programs to

deter abuse and reduce insurance costs for the majority of honest insurance purchasers.

What I would like to say is that there is fraud indeed. If we look at some surveys that have been carried out in the United States, for instance, three people in 10 believe that less than half the claims received by insurers are honest. If we go to Denmark, of 4,700 interviews conducted 10 per cent answered that they had abused the insurance contract by fraud or some other way. If we come closer to this country, in 1988 an attitude survey was carried out in the province of Quebec where half the respondents felt that insurance fraud was either frequent or very frequent; 23 per cent thought that people voluntarily made their vehicle disappear in order to collect the insurance.

As these opening comments may show, we are not here to argue the pros or the cons of this bill that has been presented, but simply to perhaps mention to you that now is the time when perhaps the government could do something that would assist in reducing fraud. In our written submission, we have included projected wordings where we suggest that all insurers doing automobile insurance in Ontario should be compelled to report details of their automobile thefts and losses to the Insurance Crime Prevention Bureau.

The Insurance Crime Prevention Bureau is entirely funded by the insurance industry, but there are many insurers who are satisfied with riding the coattails of other companies without paying their dues or without contributing to this antifraud program.

The Insurance Crime Prevention Bureau, which was incorporated in 1973, brought under one roof two organizations that had been in existence since 1923; they were the Fire Underwriters' Investigation Bureau and the Canadian Automobile Theft Bureau. These organizations were closely looked at by Ontario's select committee on company law back in 1979, where it reported on our activities. You will see this as exhibit B to the material we have presented to you.

In our existence, we have been saving insurance companies, hence the insuring public, quite a bit of money every year. Last year, as a direct result of our operations, fraud claims totalling \$18 million were prevented, which is more than twice our budget. This has been going on and on since we began our existence.

With these few comments, I would be prepared, gentlemen—I know you are fighting time, and I want to spare you reading the entire presentation I had prepared. You will receive

copies of it, but if you do have any questions, I would be very pleased to answer them.

Mr Philip: Is there any research that would be done in any country that would show that people who would commit fraud against an insurance company will likely commit fraud against several insurance companies? In other words, we hear of cases of hospitals being sued in the United States and then the person going on to another hospital and suing the other hospital and so forth. The hospitals in the United States, I gather, have had to get together and make a list of these people and cross-reference them so that when Joe Brown shows up and he has won 11 beating suits in 11 different hospitals in 11 different states, you might have some suspicion that he was not really beaten by the nurse in the hospital in the 12th state. But is there any kind of indexing system now that we have? That does not mean that a person cannot have an accident twice, but are there patterns, the same people doing it all the time? Not 10 per cent, but maybe two per cent committing 10 per cent of the fraud?

1630

Mr Cloutier: Yes, sir. One of the indexes we run is called the casualty claims index bureau. We keep track of people who are making claims where they receive an indemnity in excess of four weeks, in order to reduce the numbers of names that are kept in the database. We have a number of cases where you see people coming back time and again presenting claims for bodily injuries to one or more insurers.

Mr Philip: That would include theft of cars or cars disappearing and cars catching fire mysteriously, that kind of thing?

Mr Cloutier: Property fires, burglaries, thefts, you name it. We do have that index.

Mr Philip: Would it be as prevalent in terms of automobile insurance as it would be in, say, arson and other more expensive sorts of damages?

Mr Cloutier: I could not quite tell you if it would be as prevalent one way or another. There are a large number of cases. In car thefts, for instance, people report fake car thefts. They will dump the car in the lake and report a theft in order to collect the insurance. The reason for this is that perhaps they could not afford the payments any longer or they had repairs to effect on the vehicle which they could not afford to do. So they sell the vehicle to insurance companies. We call that selling to insurance companies.

Mr Philip: Of the known convicted cases, what percentage—I guess you probably will not

have figures on this, but is there a way of putting a dollar figure, in terms of premium, on what is actually proven fraud and not just simply a claim that may be under dispute because you are not quite sure whether the guy is telling the truth or whether he really was seen out bowling when he claims he had a back accident or something? Can you put a dollar figure on that?

Mr Cloutier: We could put a dollar figure. It is very difficult to do, but the proven fraud, to use a term you have employed—last year our insurers saved \$18 million on cases where the insureds were claiming for things which they were not allowed to, for instance.

Mr Philip: One suspicion is that the insurance companies accept an agreement and do not press charges. Is that what is happening?

The Vice-Chair: Mr Philip, I think your time has elapsed. Ms Oddie Munro.

Ms Oddie Munro: You referred to the proposal which could be amended to the act, or at least considered by the act. I think the details are such that much of the information would remain confidential. Would you be asking the insurance commission—I mean, it is regulatory. Inasmuch as you would be requiring insurance companies and insurers to submit information to the Canadian Automobile Theft Bureau, would you be then proposing to send it to the insurance commission? I think we were talking about analysing data. If this is a database of data and yet it is not public information, would you expect the insurance commission to come up with some general statement?

Mr Cloutier: No, we would not expect them to receive any copies of this, or perhaps maybe just a summary at the end of the year where we could give them a brief outline of what has been found.

Ms Oddie Munro: Because I think that would be extremely helpful to the commission, without revealing any individual data.

Mr Cloutier: Yes.

The Vice-Chair: Thank you.

Our next deputant is Dr Hamilton Hall. Dr Hall, your brief is being presented to the members of the committee. I think perhaps you are aware that you do have 15 minutes, and I would ask you to save a portion of that for questions, please.

DR HAMILTON HALL

Dr Hall: Ladies and gentlemen, I would like to emphasize two points within my rather short

brief because they are points that I feel are personally the most relevant to my situation.

I am an orthopaedic surgeon practising in Ontario and Toronto. I am on the faculty at the University of Toronto. I am also the medical director of the Canadian Back Institute. I have an active interest in the care of back injuries, nonsurgical and surgical, as they presently exist.

Because backs are such a major focus of injury, particularly motor vehicle injury, I find myself dealing on many occasions with the legal profession in terms of its assessment of my patients or my assessment of its patients, or a combination of both. The existing situation can be difficult, because in some circumstances the lawyer's best interest is to provide for his client the best settlement and clients are therefore made to look in some circumstances as being significantly disabled in order that the monetary return is commensurate with the amount of disability.

The physician's role is and should be to get these people better as quickly as possible. If this is done to the detriment of the size of the legal settlement, so be it. And it does lead in some instances to conflict between the doctor and the lawyer, in so far as they try to represent the best interests of their own client.

No-fault insurance, I think, will intensify this problem because the right to sue will now depend upon the severity of the patient's perceived injury and because, although this is to be a judicial decision, the evidence will nevertheless be required from the doctor. If the doctor is of the opinion that this individual is not sufficiently disabled to justify for the right to sue, then the lawyer will be unable to act. If in the course of time it appears that the patient was in fact more seriously injured than was at first thought, it is quite conceivable that the doctor will then be considered as having malpractised in order to prevent this individual from seeking the proper legal redress.

The same problem is going to exist in the establishment of the rehabilitation threshold. For an individual to be able to avail himself of this \$500,000, it again will require a medical opinion, an opinion which will be expressed in some instances by physicians who do not have the ability to render this opinion. Moreover, when the opinion is given that the amount of money is justified, and if the physician has any part whatsoever in the rehabilitation process, we are looking very much at a direct conflict between his ability to say, "Yes, he needs this type of rehabilitation," and then the physician's

ability to provide the rehabilitation for money as part of the rehabilitation process.

If we accept that everyone involved in this situation is absolutely scrupulously honest and that there will be no exaggeration and no misrepresentation, then perhaps matters would work very well. If, on the other hand, we accept that human nature is what it is, having worked and lived in the system as it now exists for the past 25 years, I have great doubts that no-fault will be beneficial and in fact may very well exacerbate what can be at times a very difficult and a very thorny professional relationship.

Those are the two points in the brief that I feel merit the most attention. Certainly I have other concerns, as I have briefly outlined to you in the written material, but I would be particularly concerned to discuss or answer questions on these two elements: the obtaining of the threshold and the provision for the \$500,000 rehabilitation money.

Mr J. B. Nixon: Dr Hall, thank you for coming. It is a pleasure to see you here because I have read your book and used it successfully in caring for a bad back.

Dr Hall: Thank you.

Mr J. B. Nixon: However, I have two questions or comments, one leading to a question. The first is you point out that the \$450 per week in accident benefits, in your view, is insufficient for a family of four in Toronto. I wanted to point out to you that this is after tax, so that the equivalent gross income is not \$23,400, as you suggest, but roughly \$29,500 or \$30,000, in that area, which arguably may not be enough for all in Toronto. But the question then asked is, should the low- and middle-income driver subsidize the high-income driver's wage losses? I accept that it is a moot point for many.

The second, and I think the more important one, is that by greatly expanding the available money for rehabilitation and long-term care and by setting up a mediation and arbitration system from which only the injured person may appeal, not the insurance company, it has been the hope and expectation that we will get more money for rehabilitation and treatment to the injured victim sooner.

1640

We have all heard about the state of Michigan, which has studied its threshold no-fault system. They have drawn the conclusion that for every dollar spent on rehabilitation, I think there is an equivalent \$6 or \$9 saved in terms of long-term care.

What you are suggesting is that because we maintain a threshold, this is counterproductive. I would ask you to elaborate on that, but let me say we have all had in mind and I have heard quite some evidence to the effect that the present system does not focus on rehabilitation. Injured victims really wait until their day in court before they decide whether or not they are going to get on with their lives. Part of what we are doing has been an attempt to address that problem.

Dr Hall: I agree with the motivation, and I find myself in a difficult situation, because I am not satisfied with the current status quo. What concerns me here is that if the threshold, if the \$500,000, is given under certain circumstances, someone is going to be asked to make this judgement: Is this man or does this woman qualify for this money?

What bothers me is that I am already seeing, within both the medical and legal professions, groups of people who are developing programs that will be designed to provide this kind of rehabilitation for money, people who up until this point have had no expertise, have had virtually no experience, but who are already tooling up and saying, as I have been told exactly: "It is the only product in town for which there's no market value. We'll charge whatever we can." That is literally a direct quote from a nonprofessional rehabilitation individual who is suddenly stepping into the marketplace.

I understand the motivation, and I accept everything you say. I am afraid, however, that whereas money may be well expended in the name of rehabilitation, you are going to find a great number of unnecessary services, you are going to find a great number of people charging more than is currently charged, and I certainly am not here to say that the doctors earn enough money under this present program, but interestingly enough, the doctor, as a professional, stands to make nothing, because my fees, under a rehabilitation program, my medical fees, would be covered by OHIP and it would not affect me personally.

If, however, I had a piece of the clinic, if I consulted outside OHIP in areas where OHIP does not cover me, I could stand to make a nice piece of change, so that my impetus would not be to perform as an orthopaedic surgeon, it would be to perform in some other capacity that would allow me to charge more money. I am afraid, given the nature of the circumstances, that this may well happen. I do not attack the motivation of the bill; I am concerned about its implementation.

Mr J. B. Nixon: You raise, I think, a valid concern, and it is a problem that will have to be addressed. I am hoping, and I am speaking personally, that to some extent, whether it will be entirely or in part, it will be addressed, because these clinics or rehabilitation programs, if they are in a clinic form, will have to be licensed under Bill 147. So it is not as if the pure market will prevail.

Dr Hall: Except that Bill 147—and I have met with both the minister and the deputy minister on exactly this. We were discussing Bill 147. It will be several years before it will focus down on the very type of program that we are talking about. Even then, the guidelines that Bill 147 will follow are yet to be established in so far as rehabilitation is concerned. I am afraid that as much as I would accept what you are saying, this may not come to pass for some time, at which point there will be an inertia in some of the clinics that will be hard to overcome.

Let me also say, with all due respect, that dealing with the Workers' Compensation Board as another large body and dealing in the early-return-to-work programs which the Canadian Back Institute has been doing for some time, and I took part in the pilot study, the giving out of licences to clinics for early back rehabilitation has now become very much a political decision. I realize this is a very dangerous and inflammatory thing to say, but the qualifications required are difficult to establish and there are a number of attempts now being made to upgrade the quality of these clinics, without a great deal of success.

It is very easy for people to say: "Yes, I do good rehabilitation. Yes, I've got X and Y on my staff. I want the licence." It is very hard to deny them on the basis of experience when in fact they will say: "Well, I've really had none. You can't say I'm wrong because I've never proven I'm right."

Ms Oddie Munro: I gather that your concern then would also be on the no-fault side for the range of rehabilitation services that are available there?

Dr Hall: Yes.

Ms Oddie Munro: Being an optimist, do you not believe in the case approach, or the ability of a team to monitor and discipline itself?

Dr Hall: It depends on the motivation of the team. I come from a program. One of the reasons that I felt compelled to speak is that our program has been a team approach for the last 15 years. Like everyone else, we are looking at no-fault and saying, "How will this affect us as a team?"

It will change some of the emphasis in terms of the financial ability to bring on board, for example, clinicians and paramedics who we cannot currently afford. I mean, we will say, "We can't afford to have a dietician, there's no one who will pay for this." With no-fault, the accident victim, "Yes, we will hire a dietician." Yes, the dietician is necessary, but yes, the dietician costs money, and I am not sure that in terms of actual rehabilitation benefit for dollar, you are going to gain. You will spend more; I am not sure you are going to get a great deal more for your money.

As I say in the last paragraph of my presentation, the timing is critical. The studies have been done in British Columbia, they have been done in the state of Washington, they have been done in Kentucky to show that individuals who remain off work for more than six months have only a 50 per cent chance of returning to regular employment. These are people with back and neck injuries. There is a great deal more to be said for early intervention of any sort than for an extensive, expensive program given late, so you might better focus on a less expensive, less elaborate early intervention than on the kind of clinic that \$500,000 available per patient will provide.

I am an optimist. I have stayed in this business all these years because I am, but I have also watched the abuses that exist here. I have seen them first hand, I have seen them on both sides, and I am afraid that this opens a door which, yes, may be remedied, as Mr Nixon said. We may get to a point where we can credit these people, but I am afraid the damage may be done long before that can be accomplished.

Mr Philip: I kind of expected you to be an older person.

Dr Hall: I am an older person.

Mr Philip: For years I have heard of you as the person who, if nobody else could cure them or help them to cure themselves, they sent them to you. Dr Hamilton Hall would at least make them more comfortable with it somehow.

Dr Hall: For years I have been trying to do just that.

Mr Philip: You have been successful with a number of my constituents, and indeed I believe my wife was a patient of yours at one time, so I would love to spend more time on paragraph 3, but I think we have covered that to some extent. I would rather zero in on paragraph 2 of page 2.

I guess one of my concerns is that we have been told that this system under this bill is worse

than what we have under the Workers' Compensation Act. Under the present bureaucratic Workers' Compensation Act, there are doctors in this city who could be of assistance to patients, injured workers, who have, for whatever reasons, made decisions not to encourage, maybe even to discourage that kind of client.

You talk about the increased confrontation and perhaps litigation that might be involved as a result of this. Will this bill actually, in your opinion, encourage some qualified medical personnel, be they physicians, physiotherapists or other people, to stay away from the treating of accident victims, to try to get out of this, because it is going to be such a headache and such a hassle?

Dr Hall: I believe it will. I believe that in situations where, as I have said, the doctor earns no more from OHIP for dealing in this type of situation then he does for dealing with a simple slip and fall, it will influence the decision. I think those people who remain active may well be people who in some form or another hold an interest in the financial side of the rehabilitation.

1650

I have also been—perhaps “threatened” is too strong a word, but I have been notified by four lawyers in four different meetings that were I, as a doctor, to withhold the right to sue by saying the patient is qualified to return to work, they would have no hesitation about launching a malpractice action against me for having destroyed this patient's ability to obtain rehabilitation.

As one lawyer said to me, “We’re trained to sue, and if we can’t sue for damages, we’ll sue you.” That was exactly what he said to me. Now this may be just so much talk early in the stages, and I recognize there are a lot of people concerned about this bill, but that is the type of harassment that I, as a doctor, do not like in any form, and I am afraid the bill may open the door to this type of situation.

Mr Philip: We have heard from evidence coming out of the United States that the mere headline of a company threatening to sue, or indeed filing a suit, even though that may not be successful, is enough to be very much a deterrent to people conducting whatever democratic activity they may want, such as laying complaints against the company for environmental pollution or whatever.

Dr Hall: That is right. Plus the fact that given the current temper of the times, and it is no secret that doctors in Ontario have not been highly

regarded for a while, there are a lot of doctors now very nervous about even the slightest suggestion that there will be a public explosion around their name and it might very well cause them to just back away from this type of situation.

Mr Philip: In summary, what you are saying under paragraph 2, page 2, is that some of the people who can most easily or best provide quality assistance will be discouraged from doing that, but in terms of OHIP and extra costs to the system, those people who are perhaps less qualified or will deliver less advantageous rehabilitation service will get into it because they can make a quick buck on doing rehabilitation programs.

Dr Hall: The words are yours. They are perhaps a little more blunt than I would have been prepared to use, but the meaning is very clearly mine.

Mr Philip: I am always blunt.

The Vice-Chair: Dr Hall, thank you very much for your presentation. Ladies and gentlemen, that concludes the public hearings portion of this examination of the bill. We will start clause-by-clause analysis on Monday, 12 February, at 1:30 in room 151.

Mr Philip: May I ask who will be here for the clause-by-clause from the government side? We will have a number of questions and I am—

Mr J. B. Nixon: You do not mean from this side; you mean from the government.

Mr Philip: I do not mean from the government members' side. I do not care.

Mr J. B. Nixon: Oh, come on.

Mr Philip: I hope that somebody as charming and as intelligent as Marietta Roberts will be here, but other than that—maybe Brad Nixon will find something else to do. I do not know.

Mr J. B. Nixon: Oh, come on, Ed.

Mr Philip: Who will be here from the government side—big G government, not Liberal Party—to answer our questions? There will be the deputy minister, I assume. Will the minister be here?

The Vice-Chair: I will ask the parliamentary assistant to respond.

Mr Ferraro: As far as I know, Mr Philip, I will be representing the minister, and quite frankly, I cannot answer whether or not the deputy minister will be here.

Mr Philip: Okay. The debate may be around the costs and the cost benefits. I am wondering if Mr Cheng will be here to answer any of the

questions, since we certainly only touched on some of the actuarial presentations today.

Mr Ferraro: The short answer is no. I would say, with the greatest respect and the greatest degree of certainty, that between Ms Parrish, and indeed Mr Endicott, the vast majority of the questions could be handled quite capably. If the committee, however, ran into a roadblock, certainly it is the committee's direction, if indeed Mr Cheng is available to come again.

Mr Philip: I think it would be helpful if we had Mr Cheng here. I mean, the bottom line is, how much is this stuff costing and what are we getting out of it? He is the one who has done a lot of these very interesting studies and I think it would be helpful to us to have him standing by.

Mr Ferraro: I would say, with the greatest respect, that Mr Cheng was good enough to come today. Quite frankly, I am not sure, given the short notice, whether or not he would be amenable to coming, and quite frankly I am not sure he was best utilized while he was here today, if I can say so, Mr Philip.

Mr Philip: I think he was utilized very well today.

Mr J. B. Nixon: Having dealt with questions like this before on committees, Mr Philip should understand that Mr Cheng is not an employee of the Ministry of Financial Institutions, he is an employee of Eckler Partners. If the committee requests his attendance, it is my understanding that he then becomes contracted to the committee and the committee then becomes responsible for his fees. I do not think that is a good idea.

Mr Philip: With respect to Mr Nixon's comments, I am sure he would know that under a committee system the committee may request the appearance of anyone to answer questions. This man has—

The Vice-Chair: Mr Philip, if I could perhaps be of assistance, the clerk advises me that, again, we are going through clause-by-clause to look at the wording of each of those clauses, rather than a debate of sections.

Mr Philip: The clerk will also advise you that on section 1, when they debate the principle of the bill, on the principle of the bill we can have an extensive debate on how much this is costing the taxpayers, what are the benefits from it and who are the real beneficiaries of this legislation. Since we barely got into the actuarial figures in the very short time we had, I think that the opposition will have a number of statements and comments on that of interest to the members.

The Vice-Chair: Did you wish to make a motion then? Perhaps we can clarify by that, if you are prepared to make a motion.

Mr Philip: I would move that the clerk ascertain whether or not Mr Cheng might be available and invite him to attend to answer questions on Monday.

Clerk of the Committee: I thank you very much, Mr Philip, but the clerk does not invite anyone, the committee invites.

Mr Philip: That the committee, through the clerk, invite Mr Cheng to be with us on Monday.

The Vice-Chair: Thank you, Mr Philip. Does anyone wish to speak to that motion?

Mr Philip: Being a good citizen of Ontario, he will be more than happy to oblige, I am sure.

Mr J. B. Nixon: Other than to indicate that it is entirely counterproductive and therefore we will be opposing the motion.

The Vice-Chair: Did you wish a recorded vote, Mr Philip?

Mr Philip: Yes, I will have a recorded vote.

The Vice-Chair: Okay. I am sorry. Was there someone else who wished to speak?

Mr Sola: I just wanted to say that if the same types of questions were posed to Mr Cheng in a subsequent appearance as were posed to him this morning, his appearance would be of no value, because the questions were of a political nature which had to be answered by Mr Ferraro and I do not see the point in bringing in an outside source to answer political statements.

The Vice-Chair: Thank you.

Mr Philip: I am sorry that we did not wake up Mr Sola this morning, because if he had been awake, he would have seen that that is not the case. There were specific dollar figures attached to a number of the questions that were asked and—

The Vice-Chair: Thank you, Mr Philip. All those in favour of—

Mr Philip: Since I moved the motion, at least give me the courtesy of suggesting why the Liberal members might consider voting for it.

Professor Carr has made a presentation suggesting, using Mr Cheng's own figures, that this bill reduces benefits to injured claimants by 47.7 per cent, or \$823 million, out of the pockets of injured workers. I believe that, using those same figures, we can show that in transferring that money to the insurance companies, they are actually showing a profit. Yet at the same time, premiums are not going to be reduced next year, according to the minister.

I would certainly think that the Liberal government would want to give Mr Cheng an opportunity to respond to Professor Carr's conclusions. If, on the other hand, they do not believe there is a response and that Professor Carr is absolutely correct and they accept his conclusions, then of course they will vote against inviting Mr Cheng to review his figures.

The Vice-Chair: Thank you.

The committee divided on Mr Philip's motion, which was negatived on the following vote:

Ayes

Philip.

Nays

McClelland, Nixon, Oddie Munro, Sola, Velshi.

Ayes 1; nays 5.

The committee adjourned at 1700.

CONTENTS

Thursday 8 February 1990

Insurance Statute Law Amendment Act, 1989	G-899
Ministry of Financial Institutions	G-899
Dr Jack Carr	G-910
St Catharines and District Labour Council	G-912
Dr James E. Sweeney	G-917
Honourable John Roderick Barr	G-920
R. G. F. Hill	G-926
David Dorrance	G-929
Anita Ling	G-932
Afternoon sitting	G-935
Anglo Canada General Insurance Co	G-935
Dr Barry Deathe	G-939
Frank Oliva	G-942
Marianne Butterworth	G-945
Byron Dale and Ester Gomez	G-948
William G. Clothier	G-951
M. J. Ferri	G-954
Dr Howard S. Cameron	G-956
Insurance Crime Prevention Bureau	G-959
Dr Hamilton Hall	G-961
Adjournment	G-966

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Chair: Pelissero, Harry E. (Lincoln L)

Vice-Chair: LeBourdais, Linda (Etobicoke West L)

Bryden, Marion (Beaches-Woodbine NDP)

Carrothers, Douglas A. (Oakville South L)

Charlton, Brian A. (Hamilton Mountain NDP)

Furlong, Allan W. (Durham Centre L)

Nixon, J. Bradford (York Mills L)

Runciman, Robert W. (Leeds-Grenville PC)

Sola, John (Mississauga East L)

Velshi, Murad (Don Mills L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Kormos, Peter (Welland-Thorold NDP) for Ms Bryden

McClelland, Carman (Brampton North L) for Mr Furlong

Oddie Munro, Lily (Hamilton Centre L) for Mr Carrothers

Philip, Ed (Etobicoke-Rexdale NDP) for Mr Charlton

Sterling, Norman W. (Carleton PC) for Mr Wiseman

Clerk: Carrozza, Franco

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

Witnesses:**From the Ministry of Financial Institutions:**

Ferraro, Rick E., Parliamentary Assistant to the Minister of Financial Institutions (Guelph L)
Simpson, Robert, Deputy Minister
Parrish, Colleen, Director, Policy and Planning Branch
Endicott, Eric, Manager, Policy Co-ordination

From Eckler Partners Ltd:

Cheng, Joe S., Partner

Individual Presentation:

Carr, Dr Jack, Professor of Economics, University of Toronto

From the St Cathil:

West, Rob, President

Individual Presentations:

Sweeney, Dr James E.
Barr, Hon John Roderick
Hill, R. G. F.
Dorrance, David
Ling, Anita

From the Anglo Canada General Insurance Co:

Walpole, Noel G., President and Chief Executive Officer
Franks, Mary, Policyholder

Individual Presentations:

Deathe, Dr A. Barry, Professor, Department of Physical Medicine and Rehabilitation, University of Western Ontario
Oliva, Frank
Butterworth, Marianne
Dale, Byron
Gomez, Ester
Clothier, William G.
Ferri, M. J.
Cameron, Dr Howard S.

From the Insurance Crime Prevention Bureau:

Cloutier, Jean-Claude, President

Individual Presentation:

Hall, Dr Hamilton



Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on General Government

Insurance Statute Law Amendment Act, 1989



Second Session, 34th Parliament

Monday 12 February 1990

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

CONTENTS

Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Monday 12 February 1990

The committee met at 1341 in room 151.

INSURANCE STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

The Chair: I am going to recognize a quorum and call to order the standing committee on general government. This week we will be dealing with clause-by-clause of Bill 68. The parliamentary assistant wishes to make a brief statement before we start that.

Mr Ferraro: I would like to speak very briefly to the issue of proposed government amendments to Bill 68, which indeed, as I understand it, all of you have copies of.

The Honourable Murrury Elston, Minister of Financial Institutions, has provided to you copies of proposed amendments to the Insurance Statute Law Amendment Act. The government will put forward these amendments in the course of clause-by-clause review of Bill 68. In his covering letter the minister has indicated that the ministry may also bring forward some additional amendments, but these are not anticipated to be large in number.

The amendments you have before you are largely technical and clarify a number of elements of the bill. Some respond to points made during the hearings process before this committee and bring forward solutions to problems identified by various presenters. At the bottom of the page of each of these amendments is an annotation that explains the reason why the amendment is needed and what problem it is addressing or what technical or drafting problem it is correcting.

I do not propose to go through these amendments in detail at this time unless that is the wish of the committee. The staff of the Ministry of Financial Institutions are here today and are equally at your disposal in terms of addressing the amendments or in terms of responding to any specific question which you may have. We are in your hands in this regard.

Mr Kormos: I appreciate what you are saying. I received the package of government amendments earlier today and I appreciate

having had an opportunity with the little annotations, explanations. I am concerned, though, that my package is not complete and that there might have been some amendments left out because there is absolutely nothing dealing with the inclusion of psychological damage in the threshold and there is absolutely nothing responding to the hundreds of complaints you have received about this legislation in that the threshold is literally unconscionable, that the threshold is so high as to exclude not just the vast majority but well over 95 per cent of innocent injured victims from any compensation. Indeed, the only people who are going to be eligible for consideration—because even then they have to fight it out against powerful, wealthy insurance companies with their high-priced lawyers—have to be dead or damned close to it under this threshold before they can be considered for compensation.

I am concerned because I received the package but I did not see any of the amendments on the part of the government that would adjust the threshold appropriately in view of everything that the government has heard from persons making submissions. There was absolutely nothing, the amendment, which I am sure the government would want to propose, that would consider persons with psychological injury for some compensation. I wonder if everybody else is missing the same amendments and perhaps the packages could be corrected and those amendments could be distributed.

Mr Ferraro: If I could just comment, I think the package, as Mr Kormos has indicated, while not necessarily to his liking, in all probability is intact.

Mr Kormos: Does that mean that the parliamentary assistant was correctly quoted in this morning's Sun when he said, "Despite vocal opposition Ontario's proposed no-fault auto insurance system won't change much," and when he said, "If people are looking for psychological injuries to be thrown in or the threshold lowered, they aren't going to see it"? Was he correctly quoted then in that Toronto Sun article this morning, 12 February?

Mr Ferraro: If I can respond, I was correctly quoted, albeit I must say that there was some

embellishment to my statement when I spoke to the reporter.

Mr Kormos: I did not refer to those.

Mr Ferraro: Having said all that, again I just qualify that it was my opinion.

Mr Kormos: Does that not smack of marching orders? How is the integrity of the committee system maintained when the parliamentary assistant says: "There will not be changes. There will not be an inclusion of psychological injury in the threshold. There will not be a lowering of the threshold"? Does that mean anybody who was to propose such amendments would be—well, spitting in the wind? You knew what I was thinking, did you not, Mr Sterling?

Mr Sterling: I am afraid so.

Mr Kormos: Does that mean it is all moot, that it is to no end for anybody to produce amendments of that ilk? Because you have said there will not be any changes in this threshold, there will not be a lowering of the threshold, this threshold will not be made more humane, this threshold will not be made more acceptable to the vast numbers of people across Ontario, drivers and victims, because you have said to hell with the people who came before this committee and pleased with the committee to include some consideration of psychological injury.

You heard from head injury associations, you heard from rehabilitation experts, you heard from psychologists and psychiatrists, who pleaded with you to include some consideration of persons suffering those types of injuries, and you are saying that frankly you do not give a damn. They might as well have stayed home and not wasted their energy and their breath coming here to Toronto, preparing well-prepared submissions. We might as well not have wasted our breath in responding to them and that the sometimes oh-so-careful questioning of them by government members was really—is this but a show trial, that the exercise was moot? Is in fact the parliamentary assistant saying that those are the marching orders that the members of this committee are expected to adhere to when he says, "There will not be changes to the threshold, there will not be changes to permit the threshold to be lowered so that people can be adequately or fairly compensated and there will not be changes to the threshold in response to the dozens of submissions heard about psychological injury"?

Who exactly is calling the shots because it seems to me that the only people who are going to benefit from not including psychological injuries and not lowering the threshold are the insurance

industry and you are saying, once again, that you do not give a damn about those people who made submissions. Is that what the parliamentary assistant is saying?

Mr Ferraro: No, that is not what the parliamentary assistant is saying. First, I have a bad habit, even though I am in this game called politics, that when somebody asks me a question and asks for my opinion, I usually tell the truth.

Mr Kormos: Fair enough. We appreciate that.

Mr Ferraro: To suggest that I said I do not give a damn about such-and-such a person, and I will not editorialize to any significant degree, is totally inaccurate. I think it is precisely that in my own mind, and I say this quite honestly, that I am satisfied with this package. In my opinion, insignificant change would necessitate increased premiums, and indeed if what the majority of politicians want is increased premiums, certainly it obviously would add to the benefit package. In my view, I am quite happy with the balanced approach the government has taken in dealing with this issue and to suggest otherwise and to suggest that I do not give a damn is factually incorrect.

Mr Kormos: I will then accept what the parliamentary assistant says because I perfectly well believe that he is quite candid in his statements. When he says that he does give a damn, I will take him then at face value. But he says that, notwithstanding that he cares or that he says that he cares, he is still of the opinion that psychological trauma and injury and injured persons ought not to be considered by this legislation. In that respect I say to the parliamentary assistant that I believe him when he says he cares. How could anybody have listened to those people and not care? One would have to be virtually inhuman to listen and not care. Well, the next stage in caring is to act on that.

You talk about the necessity, if the threshold were to be lowered or if psychological injuries were to be included, of there being dramatic auto insurance premium rates. How can you reconcile that with the revelation last week that indeed the auto insurance industry was paying out net \$161 less per vehicle? That is according to your own actuarial statistics. If indeed that is the case, the insurance industry is going to be paying out net \$161 less per vehicle; with five million vehicles in the province, that comes out to somewhere around \$800 million. It is not difficult to understand now where that figure of an \$800-million windfall is coming from. How can the minister say that, in view of the fact that there is

going to be \$800 million in net savings by virtue of compensation not being paid out by virtue of this legislation?

Surely, if you are talking about balance, Mr Ferraro, you are talking about balancing the interests of the insurance industry with the interests of injured victims, and there does not seem to be much balance here because it seems to be awfully weighted to one side. I tell you, it is getting awfully lonely, with six government members here, speaking out on behalf of victims and saying more than simply, "We care." We care and we also want to do something to make sure these people are not left hanging out to dry.

You say that is your opinion. Is it really your opinion or is what you are expressing a matter of ministerial policy at this point in time?

1350

Mr Ferraro: It is my opinion. I do not know how much you want me to embellish my statements, but first, you made mention of the fact of a certain \$800 million windfall, and we have heard that over the last number of weeks. I would dispute those figures. I would say without hesitation, too, that one actuarial report is like—I mean, actuaries are like politicians. I have said this before. They will tell you just about anything you want to hear based on different assumptions. Having said all that, I am confident, quite frankly, that this new direction that is being proposed for insurance and the way we do insurance business, mindful of the fact of why we are even involved in it—and that is the anticipated 30 to 35 per cent increase in premiums—deals with the vast majority Ontario motorists, the 6.2 million people who drive in this province in a much fairer and cost-effective and balanced way, mindful of the fact that no legislation is ever perfect, Mr Kormos, and I think you would acknowledge that.

It addresses such things as those people who were at fault, and their families, who got no compensation before. It addresses those people who were not at fault who could not prove that they were not at fault. It addresses those people who did not either have the mental capacity or the financial resources to take an issue to court. The financial consideration is one thing; the mental problem is another, mindful of the fact that in many cases it takes a number of years to get a decision, albeit without knowing what that decision is. In this particular package of substantively increased no-fault benefits, balancing it off with continued access to tort or courts in case of serious and permanent injury, I can sit before you, Mr Kormos, look you in the eye and say

without hesitation that it is a much fairer, more equitable and affordable product than the existing system.

Mr Kormos: I understand that, but—

The Chair: I have Mr Philip on a supplementary, if you would, and then we will come back to you.

Mr Philip: To the parliamentary assistant: We have had exactly—and I checked with the clerk to confirm—227 briefs before this committee, presentations, and some were in written form because they were not able to get on the list, but 227, many of them fairly substantive briefs. I ask the parliamentary assistant, to the minister, is it your opinion that, having received 227 briefs, these amendments in the bill, if amended, including these amendments that you are about to table today, are reflective of the view contained, or even a majority of the views contained, in those 227 presentations? Or are you simply ignoring the views presented in 227 presentations before this committee?

Mr Ferraro: I do not think we are ignoring all of the views of the 227. I believe you, Mr Philip, that this is the number. I said on numerous occasions that any time there is significant change, and indeed this is significant change, there is always resistance. I think everyone on this committee certainly knows that, indeed everyone in this room.

There is no question we are significantly changing the way we deal with the insurance business in the province of Ontario, and we all know why. In my view, the affordability problem is the primary reason. I said before that if we were not worried about the average rates going from \$776 to well over \$1,000 this year, we would not even be talking about this issue at this point in time.

To suggest that all 227 deputations that the committee received, either in person or in writing, were all negative I think is wrong.

Mr Philip: Who suggested that?

Mr Ferraro: No, no. I think I am going to make you feel a little better. I think it is safe to say that the vast majority of them were by people who are definitely opposed to the legislation, specifically with regard to the threshold and the fact that access to tort would be limited. I think that is a safe assumption there, Mr Philip, without hesitation. There were many groups—consumers' associations and others—that said:

"Well, we would like to go to a pure no-fault, we have no access to tort or we would like this changed or that changed. Having said all that, we

do agree, though, that the fact that you have increased the benefit level substantively and the rehabilitation and supplementary and medical health care substantively is good. However, we would just sooner have this." I acknowledge that.

I would say finally, in conclusion, that being on the government side, we have to make a decision. We have made a decision essentially, notwithstanding any amendments that may yet come in this week, and we think it is a fair and equitable one. From a personal standpoint, I think the real proof in the pudding will not necessarily be from some of the speeches that we all give surrounding this issue or some of the articles we read, but quite candidly, when the people of the province of Ontario either get their insurance or, God forbid, get involved in an accident and when they see their premiums, which are going to be, on average, reasonably increased or not increased or in some cases significantly increased, for all the reasons that we know, but essentially zero and eight per cent on average in the province of Ontario. I think I can live with that judgement.

Mr Philip: If I may, the member for Etobicoke West (Mrs LeBourdais) assured a number of the deputants that she and the Liberal members were listening. I read these amendments and I see no reflection of that listening, or if she was listening she certainly did not have any influence in bringing about any changes. So while certain Liberal members told deputations, "Yes, we're listening. Thank you so much for making your presentation," in fact we find that when it comes to acting on those recommendations there is nothing in here.

I think the parliamentary assistant to the minister has just admitted that, that in fact the views contained in those presentations, if they were heard, probably were not listened to or, if they were listened to, they certainly, for whatever reason, were not acted on.

You say that the proof is in the pudding—and the minister has made statements outside in the media, although he does not seem to show up to make them in committee—that this is cost-effective, that it will somehow save the drivers of Ontario some money in terms of premiums. Yet of the 39 actuarial research papers and submissions that you tabled, not one shows either that a removal of the tort system is going to save on premiums or that there is going to be a reduction in premiums.

Perhaps it is the old idea that if you say something over and over again people will eventually believe that it is true even if it is not.

How can we possibly be dealing with major changes—you say they are major, and I agree, you are changing the system, there is no question about that—without putting a dollar figure on it? You have not filed research that shows this will decrease premiums. We are waiting for that. We have had some examination of the actuarial figures that seems to indicate that it is going to reduce benefits to injured claimants by some \$823 million—that is using your own actuarial figures—or 47.7 per cent of the benefits. Indeed, if we add to that the \$163-million cost to the taxpayer—and that is not counting the cost of the bureaucracy that you are setting up but just in direct subsidies, giveaways, to the insurance companies—you are talking about close to \$1 billion being transferred out of the pockets of motorists and taxpayers over to the pockets of the insurance companies.

1400

Mr Kormos: And that is just in the first year, Ed.

Mr Philip: And that is just in one year.

I guess I have to ask you, before you say that this is cost-effective, where your research is that shows that it is cost-effective, that the transferring of close to \$1 billion from ordinary consumers to the insurance companies is in any way cost-effective.

I moved a motion on Thursday asking that Mr Cheng be here so that we could question him on his actuarial figures, because some very serious accusations were made. The Liberal members decided to use their majority and vote against that. Now we do not even have the minister here to give his comments on the 227 presentations that were made, and I guess one has to wonder really how serious you are. It appears quite frankly that you had your minds made up. You knew exactly what you were going to do. The public be damned. It does not matter what they had to say; you were going to sit here politely, put up with their presentations and then, having had the presentations over with, you were going to do what you wanted anyway.

Mr Ferraro: I feel compelled to deal with this because they keep bringing it up, and no doubt will continue, being the very determined opposition members that they are. With the \$800-million or \$1-billion giveaway, I just would say, with great respect, you are referring to a report as analysed by Professor Jack Carr, who is a very capable individual, dealing with a report by Joe Cheng.

Again, actuaries will make certain assumptions right off the bat, and indeed we are not

trying to hide anything. If we felt that it was deleterious to our cause, quite frankly there would probably be a good argument for not giving you access to that report, but we gave you every piece of documentation save and except the cabinet submission that we dealt with, and that is 39 reports, mindful of the fact that you asked for 23 or 27 reports.

The report by Mr Cheng, as I said, was based on assumptions, which I am sure are correct as far as he is concerned, in dealing with figures from 1986 and 1987. Certain conclusions can be made taking certain assumptions. It is interesting to note, I say with respect, that Dr Carr made no reference whatsoever to the approximately five Fair Action in Insurance Reform reports that were included, mindful of the fact that Professor Carr is an employee of the FAIR organization and probably because a number of actuaries did not agree with the assumptions made by FAIR. It is interesting as well that no allusion was made to report 21, which dealt with the fact that many everyday people were not going to experience any decreases whatsoever. The opposition can take a particular actuarial report and hold it up to the public and say, "This is it, folks, this is the factual report," and it does not make a hell of a lot of sense. That is their right. But there are a significant number of other reports that would be somewhat in opposition to the proposition that they are trying to portray.

I guess I just want to conclude by saying that I am grateful to the minister for giving me the pleasure of having to respond to the opposition over and over again. It is going to be very interesting and, I am sure, quite a memorable experience for me to tell my grandchildren, if indeed I run out of things to tell them.

Mr Kormos: That was as sycophantic a little comment as could ever be made.

You talk about this legislation being far from perfect, and once again I am going to disagree with you; this is perfect legislation. The insurance executives have been walking around with this seraphimic little gait because they all think they have died and gone to heaven. If you are an insurance company executive you think this is the ideal legislation. You have not just come close to perfect, Mr Ferraro from Guelph; it is perfect. The problem is that if you are a consumer, if you are a driver, if you are a victim and now even more sadly if you are a head-injury victim, if you are a victim whose injuries manifest themselves in psychological injuries, from their point of view this is far from perfect.

Again, I ask you about balance. When you have the incredible majority that you have, when you control the process the way you do, is it not incumbent on you to generate a little bit of balance? Is it not incumbent on you to give some consideration to the victims? You talk about them as perhaps in some respects being helpless, having less power; they certainly do. They clearly do not have as much power and influence with this government as the auto insurance industry does.

I say this once again: I cannot for the life of me know why the whole gang of you is throwing the fight, why you are going down. Tell us what they have on you. Is it blackmail? Is it more subtle than that? Tell us what the insurance industry has threatened you with so that you would take these desperate steps that you have and just hammer the life out of innocent victims across Ontario. What have they got on you, Mr Ferraro? What have they got on the minister? What have they got on government backbenchers?

You talk about the proof being in the pudding. I say this: Mr Justice Barr was here last week, a retired justice of the Supreme Court of Ontario. He indicated that since his call to the bar he had heard trials dealing with motor vehicle litigation, and that he never heard of one that concerned itself with the matter of fault. In his view it would be the rare instance that litigants would ever have to discuss fault. That is something that is self-evident; the real issue in the litigation that he has been able to oversee is a matter, obviously, of the amount of damages.

You heard from Mr Justice Barr. He made available to this committee an outstanding insight into this legislation. He made nonpartisan criticisms of it. He laid it out for you on a platter. He virtually wrote the amendments for you. He was not alone because Mr Justice Haines made a submission to this committee. His did not receive some of the attention that Mr Justice Barr did. Mr Justice Haines sent in a lengthy written analysis of this legislation. Mr Justice Haines, a retired judge of the Supreme Court of Ontario, an outstanding trial jurist with outstanding experience in this very type of litigation, made you the beneficiary of his wisdom. I will not venture to think what Mr Justice Haines and Mr Justice Barr would feel, having gone to the extent they did and performed the research and analysis they did in an unbiased, nonpartisan way, to be rejected as they were.

You talk about fairness and equitability. You talk about fairness when you are producing a piece of legislation that has the insurance

companies with grins on their faces. They are as happy as pigs in the proverbial barnyard, and they are as pleased as they could ever be. They got more than they ever dared dream of getting. They got more than they asked for in their own submissions to a government inquiry back in 1987. You have given away the farm, have you not? You have given it all to them, lock, stock and barrel.

1410

Let the auto insurance victims, let the head injury people, let the people with psychological damage, while they are on their own—what kind of fairness and equity is that, Mr Ferraro from Guelph, parliamentary assistant to the Minister of Financial Institutions? What kind of fairness and equity is it to the kids, to the seniors, to the victims of all ages and occupations who are going to be denied compensation for their pain and suffering and their loss of enjoyment of life because of what you are doing right now?

Where is the fairness and equity when you give the marching orders, when you deny the democratic process? This is not the first time you have said it. The Toronto Sun interview this morning was not the first time you gave those marching orders. These were at the 12th hour, just to make sure everybody remembered what you said up in Sudbury when Mr Runciman questioned you and you said basically the same thing. That was before you heard many of the presentations submitted to you, including that by Mr Justice Barr, among others. The government had a singular agenda here. Its agenda so interestingly was part and parcel, and in line, and one and the same as the insurance industry's agenda.

You talk about the proof in the pudding. I tell you this, Mr Ferraro, there is still a great deal of confusion in the public about you and the insurance industry's no-fault scheme because your marketing people have adopted a label which at first glance has an attractiveness to people. They are confusing it with no-fault benefit structures that are existent in western Canada, as part of public, nonprofit systems that also retain the right to be compensated for pain and suffering and loss of enjoyment of life.

Even the Liberal Party in Quebec, which has denied the right of access to the courts in its no-fault system, as you purport to do and are going to do if you get your way, even the Liberal Party in Quebec has a structure for providing for compensation for pain and suffering and loss of enjoyment of life. The proof in the pudding? I tell you, the proof is going to be in the pudding.

The John Deere worker or the Ontario Paper worker goes going through the just unbelievable experience of receiving a phone call from the OPP and being told that his wife with their little kid in the car was broadsided by a drunk driver. Then, once he attends to the medical emergency, later that week, recognizing the pain and suffering that his little kid and his wife are going through with broken bones, fractured ribs, traction, hospital treatment, goes to the family lawyer and says, "I want you to help us get compensation for my wife and my baby, my little boy." The lawyer says, "No, it can't be done."

The Ontario Paper worker or the John Deere worker or the Atlas steels worker says: "Come on, you're my family lawyer. You have been acting for my family since we bought our house, since we made our wills and now we are trying to get help from you." The lawyer says, "No, I can't," and the guy says: "But you don't understand. It was a drunk who broadsided my wife and my boy. They weren't doing anything wrong and they have broken bones and they're suffering." The lawyer says, "No, the Liberal Party and the auto insurance industry in Ontario took away your right to receive compensation back in 1990."

Then the proof will be in the pudding, Mr Ferraro.

You talk about 8 per cent to 50 per cent premium increases? Cut it out. The figure of eight per cent was dreamed up before there was any analysis. You knew and your government knew double-digit was not going to sell, was not going to market. What you have done is marketed a product here that bears no resemblance to what is going to happen in the final analysis. This goes beyond smoke and mirrors. This goes beyond the pea and shell game and all the other ways we have tried to describe it. This goes right to the heart of the most—this is the most dramatic consumer fraud this province has probably ever seen.

The proof is in the pudding now. People out there do not believe you when you say eight per cent, because you do not have the facts to substantiate it. Mr Philip talked about that, and other members of this committee. You do not have the facts to substantiate that claim. We know it is going to be more than eight per cent, because if it were not the minister would not have bothered throwing in that 50 per cent figure.

He is tuning the public up because he is going to Mike Wilson them; he is going to GST them. He is saying 50 per cent so that when the majority of drivers get 30 per cent increases after this bill

is passed, they are going to say, "Oh, my goodness, at least it was not 50 per cent." You are setting up drivers across Ontario for premium increases well in excess of eight per cent. You know it.

We have hammered away at the fact that you guys got over 100 grand from the auto insurance industry in the last general election. We have hammered away at the fact that individual Liberal members of this committee received sizeable donations from the auto insurance industry in their own campaigns.

We have hammered away at this and we have been confronted with the response from Liberal members—Liberal members have said to me—"Do you think I would go down for a mere \$1,000 from the auto insurance industry?" I thought about it and I thought, would they throw a fight, would they hit the canvas for a mere \$1,000? And I say, maybe they are right, maybe I will give those actors, those Liberal members of this committee, the benefit of the doubt, which leads me to the next question, the natural question, what have they got on you? What are they holding over your head? What are the threats that are being made against you?

In the name of decency speak out about that. We have an auto insurance industry that is so wealthy and so powerful, but we have to fight back. We cannot let it control democratic institutions. We cannot let it influence the course of such important legislation. We cannot let it do that.

We have an auto insurance industry that has directed the government's hand. The government, having refused in all of its deliberations—it has done all these expensive studies: millions of dollars on the Ontario Automobile Insurance Board, \$250,000 on the secret documents that were prepared by the ministry during the course of 1989.

Yet of all those deliberations and considerations that it cost, let's say—you guys make much ado about the startup cost of a public auto insurance system like the Liberals run in Quebec or like the Conservatives run in Manitoba and Saskatchewan. My goodness, the second most right-wing government in Canada, the Socreds in British Columbia—as we have learned, the Peterson government here has surely acquired status as the most right-wing government in Canada—even the Social Credit government in British Columbia runs a public system. In all your deliberations, did you cost the startup costs of a public system? Did you do that? No. The auto insurance industry said: "No, we can't

afford to live with that. If those figures ever got leaked out, there would be hell to pay."

You talk about dislocation. You see, the government has stopped saying in its arguments against public auto insurance that it does not work. Indeed, the Minister of Financial Institutions and the Premier (Mr Peterson) have very much left the door open when it comes to public driver-owned, nonprofit auto insurance, but they have started with the rationale about startup costs.

You had an opportunity to look at startup costs. You could have referred it to Kruger. We asked the minister on more than one occasion in the House during question period, "Please, direct Kruger and the Ontario Automobile Insurance Board to examine public systems and their specific costing with respect to Ontario." You did not do it. We specifically asked the minister to do that and he did not do it. He did not take advantage of that opportunity.

You talk about dislocation of the 40,000 persons employed in the insurance industry and then you back off. You did this yourself, Mr Ferraro, the member of provincial Parliament for the Liberal Party for Guelph and parliamentary assistant to the Minister of Financial Institutions. You did this yourself. You said: "Well, no, it is not all 40,000 of them that are going to be dislocated. I never said all 40,000." You said that. Then we asked: "Well, how many are going to be dislocated? Really, how many jobs are going to be lost, if any?"

You did not direct any of your studies to that, did you, Mr Parliamentary Assistant? You did not dare because the insurance industry said: "Don't, because if those figures ever became public there would be hell to pay. The cat would be out of the bag."

1420

We are looking at a paycheque here for the auto insurance industry that is incredible, and it is not being drawn on their bank account; it is being drawn on the incomes and savings of drivers across Ontario and of victims, innocent victims.

You talk about caring, about fairness and equity. You tell that to somebody who has been bloodied and smashed to the ground by a drunk driver, because you know that under this system a drunk driver is likely to be treated better than the kid he mows down. You know that.

All I say is, what have they got on you? Share it with us, please.

The Chair: Briefly, Mr Ferraro, and then Mr Runciman, Mr Nixon and Mr Philip. Mr Ferraro, did you want to add some comments to this?

Mr Ferraro: Briefly.

The Chair: I feel from all sides a filibuster coming on. We have been charged with a responsibility. I am sure this will be a warmup for committee of the whole, so I would just try to remind the committee that we should try to exercise the direction we were given. Mr Ferraro, briefly.

Mr Ferraro: I share some of your sentiments and concerns, Mr Chairman. I am not sure how this is addressing the clause-by-clause aspect we are supposed to be dealing with, but nevertheless—

Mr Kormos: How are your amendments addressing it?

Mr Ferraro: This whole experience was very informative. I must admit it was certainly trying for a lot of the members on both sides. I guess if I had the power, they should all be given a bonus, because it was a tough job, quite frankly, tougher for members on the government side and that is obvious because of the number of delegations—

Mr Kormos: Who were opposing the legislation.

Mr Ferraro: —who were obviously resisting the legislation. I found it very informative and also very penitent, quite frankly. The whole process for me as a parliamentary assistant was a wonderful experience, but I find that I was getting a callus on my tongue, so this gives me a little bit of an opportunity to respond to some degree.

Mr Kormos and others have indicated on certain occasions that, to use their words, we are in the pockets of the insurance companies.

Mr Kormos: So deep that you are spitting out lint.

Mr Ferraro: No, Peter, I have heard that one. Get a new line, please.

Mr Kormos: But it is true.

Mr Ferraro: Having said all that, there is no question that in my campaign—let me speak for myself—I received \$700 from insurance brokers, and in one case from a friend of mine. I am a little upset that my own cousin who is a broker did not give me a nickel, but that is a subject for another day.

I also checked my personal returns and I received well over \$2,500 from lawyers. So when you look at the \$700 I got from insurance brokers, as opposed to \$2,500 from lawyers, I guess then the natural conclusion is that the lawyers in my riding are overwhelmingly in favour of this bill as well, Mr Kormos.

I say that facetiously. Mr Kormos has a knack for rhetorical comprehension and I find myself compelled to walk around with a dictionary under my arm. He indicated that insurance companies have a “seraphimic little gait” about them. I am not exactly sure what that means, but maybe they should consult a doctor or get a laxative.

Having said all that, I do not believe quite frankly what insurance companies say; I do not believe quite frankly what opposition members say. It is for that particular reason, dealing with the former, that we have established in this bill an extremely strong insurance commission with some legitimate teeth that will be able to scrutinize any and all increases.

Mr Kormos: Dentures.

Mr Ferraro: We will scrutinize in some cases, hopefully, reductions.

Mr Kormos is right. A significant number of people will have increases above eight per cent; a larger amount perhaps, and indeed a significant number of people, will have reductions in their premiums. I would say to Mr Kormos who says that we are misleading the people, that all people will get an average increase above eight per cent. If that happens, then quite frankly your day will be made. This government stands behind the on average increase of zero per cent in rural areas and eight per cent in urban areas, and we will stand by that figure.

Having said all that, there was an allusion to certain delegations and certain presenters, Judge Barr being one, who indicated certain valuable bits of information. Indeed, I could refer to a presentation made by Dr Slater, who is equally capable of presenting a particular point of view. That is the beauty of this business.

It is a compelling fact that the government of the day has to look at all the variables and over the last number of years indeed we have looked at all the submissions to Osborne, to the OAIB. Mr Kormos indicated that no study has ever been done on the costing of a public auto insurance plan, that we have never looked at it.

That is not necessarily true, because Osborne himself looked at certain costs associated with the public auto insurance plan and as a result of that particular finding, and others no doubt, Justice Osborne said, “No, the province of Ontario would not be best suited to a public auto insurance plan.”

Now I did not happen to have, quite frankly, speaking personally, Justice Osborne’s opinion on that. Philosophically, I am a free-enterpriser and quite frankly I do not think the government

can do anything better than the private sector, much to the chagrin no doubt of the New Democrats, who we all know are obviously oriented towards government control of everything.

Mr Kormos: Oh, cut it out.

Mr Ferraro: Having said all that, we are prepared to live by this bill which we deem to be fair and balanced—

Mr Philip: That is why we have been advocating—

Mr Ferraro: —to provide a substantive number of benefits to those that, through no fault of their own, would not necessarily get any benefits under the present tort system.

Mr Kormos: We have no-fault.

Mr Ferraro: I think if Mr Kormos would not acknowledge that, then he is not being totally fair.

Mr Kormos: No-fault, Rick. We have advocated no-fault for a long time.

Mr Ferraro: I say, finally, that we will be judged by the pudding and, indeed, if the pudding is not zero and eight per cent on average, then quite frankly—

Mr Kormos: Real people, what are they going to pay?

Mr Ferraro: —Mr Kormos and others will be very pleased. But we are satisfied that the vast majority of the people of Ontario will look at this in retrospect and say that we were fair, compassionate and, all things being considered, very reasonable.

Mr Kormos: Never mind the pudding. You are going to end up with egg on your face.

The Chair: Mr Runciman, Mr Nixon, then Mr Philip. Then I would like to start on clause-by-clause.

Mr Runciman: Well, I may soothe some of your worries, Mr Chairman, in respect to a filibuster. I certainly do not intend to engage in a filibuster.

I was not enthused about even attending the clause-by-clause process, as I indicated last week, but I have been encouraged and asked to do so by the leader of our party and I have indicated to him that I am prepared to take it on a day-by-day basis. I am certainly not enthused after having a look at the amendments that the government has presented for the most part. They are certainly not substantive and do not touch on some of the issues we felt they were perhaps going to touch on. In fact, some of them

are making the legislation that much tougher in terms of its impact on consumers.

Just taking a cursory look at them, I want to say that one of the efforts I have made since the outset of this hearing was to try to appeal to the Liberal backbenchers serving on the committee. I guess it is a combination of the overwhelming number of witnesses appearing before us in opposition to the legislation and the very moving testimony that we have heard from many of those witnesses.

I have indicated that, in my nine years as a legislator, I perhaps have not heard more moving, emotional testimony than I have heard during my service on this committee, and it has had an impact on me. As a result, on a couple of occasions I have lost my cool and regrettably said a number of things that I would prefer not to have said. I guess part of that frustration has been the effort to make an appeal to the Liberal members of this committee, an appeal based on the testimony and the witnesses who have appeared before us.

At the outset I had some optimism—Mr Furlong had made public comments, but then he withdrew from the committee after one week. Some of the comments made earlier by Ms Oddie Munro, certainly before our hearings started, gave me some degree of optimism as well in respect to how she might approach these hearings. I was not very optimistic, frankly, about Mr Nixon and Mr Velshi, having served on committees with them before. In any event, I was hopeful that perhaps something would change.

We heard Mrs LeBourdais last week say, "Mr Runciman, it's not over until the fat lady sings." We all recall that, and she was quite upset at my comment. It will be interesting to see how this transpires over the next couple of days in respect to whether there are going to be any substantive changes and amendments perhaps coming from this side of the room that will be supported by Mrs LeBourdais and other colleagues of hers who have suggested that they indeed have been listening to the witnesses and that that testimony is going to have an impact on the judgements made in the next few days.

1430

Obviously I am not very optimistic and, as I said, I am going to be assessing on a day-by-day basis whether I continue to participate in these hearings. As I said, I have been bothered and upset, extremely so, by the kind of questioning that we have heard, I guess perhaps most by Ms Oddie Munro, whom I was optimistic about when we entered this. We have had the same sort

of inane questioning coming from her on a day-by-day basis, despite what the witnesses have been saying, especially in respect to head injuries and psychological injuries. We had the same kind of thing day after day. I am telling you, Mr Chairman, it has been extremely frustrating to me and I know to my colleagues on this side of the room.

I want to say that one of the things brought to my attention by my colleague Mr Sterling today—and I think it is an important point, certainly one that has not been brought forward up to this point—is the benefits available through the Criminal Injuries Compensation Board. Under that act, the maximum payout for the victim of a crime is \$1,000 a month; \$1,000 a month for someone who is shot in a convenience store holdup, for example. That individual, that victim of a very serious crime, under the legislation of this government, is going to be allowed up to \$1,000 a month.

This legislation that you are bringing in, so-called equitable and fair legislation, is going to permit an at-fault, reckless driver perhaps to receive considerably more than an innocent victim of crime in this province. You tell me what is fair and equitable about that. There is absolutely nothing fair and equitable about this legislation and all of you know that because you have sat through this testimony for the past five weeks, but it has had no damned impact on you whatsoever. If it has, we have not seen it up to this point.

I was talking to a chap on the phone last week who is in the riding of Mr Leone, a Liberal backbencher, and he told him that this legislation is bad, it stinks, it smells. But Mr Leone is a member of the Liberal Party and you have to do what the boss tells you to do. That is the kind of gutless approach being taken by those 93 Liberal members of the Legislature who do not have the intestinal fortitude to stand up to a Premier who has lied to the people of Ontario, has made a dreadful mistake and is continuing with this kind of program which is going to lead us into serious difficulties down the road.

I do not want to really continue with this, Mr Chairman. I think you have found out how strongly I feel about this over the past number of weeks. Last week, when I asked for the insurance company filings to be tabled with this committee and we were stonewalled and the parliamentary assistant indicated that those will be made public only following passage of this legislation, it was pretty clear to me that we were not going to see

substantive changes coming from the government.

I know Mr Kormos and I had been suspicious that at some point during this process we were going to see indexation and a few things to try to soften the impression with the public, but given the refusal to table those filings and given the public musings of Mr Elston in respect to increases in the neighbourhood of 50 per cent for some consumers, it appeared obvious to me that you were in a situation where you probably could not bring in any kind of substantive changes that were indeed going to have an impact on rates in terms of escalation.

I am prepared to continue in this exercise. I hope that it is not an exercise in futility and that we are going to see some changes take place. I obviously do not agree and my party does not agree with threshold no-fault. I think it is a terrible mistake for this province, but I think that we are prepared to support some changes that will at least ameliorate and soften the legislation so that in some way, shape or form it does improve in terms of its impact on consumers of this province. From my own personal point of view, if I do not see any progress in that respect within the next couple of days, I will remove myself from this exercise.

The Chair: I will turn it over to Mr Nixon. For the record, Mr Runciman, I think you want to be fair. Mr Furlong did not withdraw from the committee. He was appointed chairman of a select committee and in that capacity he has his own hearings schedule process. I believe Mr McClelland filled in.

Mr Runciman: I could have gone on at length. If Mr Furlong felt strongly enough about this legislation, as he has indicated—and if Mr Ray felt strongly enough about this legislation, he would have appeared at the committee hearings in Windsor. Again, it is a case of gutlessness on the part of 93 Liberal members of this Legislature.

The Chair: I am attempting to help set the record straight. Take it however you would like to take it. Mr Nixon, Mr Philip.

Mr Runciman: You are being an apologist for one of your colleagues, that is all.

The Chair: No, Mr Runciman, I am simply stating the fact that he was appointed chairman of a select committee.

Mr Runciman: He is a big boy. You do not have to be here apologizing for your colleagues.

The Chair: Mr Nixon, Mr Philip and then Mr Sterling.

Mr J. B. Nixon: One of the things that has amazed me about the proceedings for the last four weeks is that there has been continuously from the opposition an unwillingness and a failure to deal with the issues at hand. They have had an opportunity to deal with the bill—

Interjections.

Mr J. B. Nixon: I am having trouble hearing myself speak.

The Chair: Order.

Mr J. B. Nixon: They have continuously used the amount of time available to them to attack members on the government side, the parliamentary assistant, the Premier, and just about everyone else who is not sitting at the table with them.

One of the questions I have had as I listened to this and wondered about their behaviour is "Whatever happened to the rules of order around here?" They have made allegations against other members, they have imputed false or unavowed motives to other members, they have charged other members with uttering a deliberate falsehood, they have used abusive or insulting language, all of which are violations of the rules of order.

All of those statements, in my view, were totally unnecessary if we were here debating a bill and dealing with substantive issues. None the less, I suppose it makes good theatrics, good politics and good headlines to make all sorts of wild allegations, impute false motives and charge members with uttering lies and so on and so forth. I do not think it served the public process one bit. I do not think it served the political process one bit.

I move that we move to clause-by-clause review.

The Chair: I have Mr Philip and Mr Sterling.

Mr Kormos: You are trying to muzzle Mr Philip.

Mr J. B. Nixon: Mr Chairman, I was putting a motion.

The Chair: Were you? Then I believe it should be dealt with.

Mr Philip: So you are moving closure?

The Chair: I had said earlier that I would entertain Mr Philip, and Mr Sterling wanted to be recognized. He is not here, but at least allow individuals to make—

Mr Philip: He is coming back.

The Chair: I am sure he will come back.

Mr Philip: He just went out to answer a phone message.

Mr J. B. Nixon: All right, could I amend my motion then? I move that once Mr Philip and Mr Sterling have spoken, we move to clause-by-clause review.

The Chair: Thank you.

Mr Kormos: Do you think that motion will pass?

The Chair: That was my intention. Mr Philip.

Mr Kormos: Do we debate the motion?

Interjection No.

Mr Kormos: Why not?

Mr Philip: Let's deal with it after I have spoken.

Mr Kormos: Go ahead, Ed, give them your piece. Tell them what you think.

Mr Philip: In parliamentary democracies—and in that I include congressional-style democracies, democratic democracies—it is increasingly the practice that before governments introduce legislation, they cost it. In some democracies, such as Australia or indeed here in Ontario now with the excellent work done by our Provincial Auditor, Mr Archer, programs that are not costed and where objectives are not clearly in place to measure what it is that the money is being spent on are open to criticism by the Auditor General or the Provincial Auditor.

1440

My question to you is this: Can you supply to us the exact cost of the giveaways to the insurance companies? We know about the \$95-million giveaway in terms of the three per cent premium tax giveaway. We know about the \$46 million to OHIP. We do not know about the cost of this very bureaucratic system that you are setting up. Since in all of the 39 actuarial documents that have been tabled I cannot find any document there that gives me a clear indication of how much this legislation is going to cost, I wonder if you can supply that information. That is the question to the parliamentary assistant, since the minister is not here.

Mr Ferraro: In response, Mr Chairman, let me say to the honourable member that the analysis of cost is not only not an exact science, but there are a number of variables that one has to consider. I guess, to be blunt, there is no one single document that says this is how much this is going to cost.

In fairness to the government, two or three years ago we did not know a heck of a lot about the insurance business. If you looked at the 39 actuarial reports, in themselves you get a wide range and divergence of opinion vis-à-vis the

costing, and that is based on a number of assumptions, a number of variables that come into play. Quite frankly, I do not think you could ever get one piece of paper that was going to give the answer that Mr Philip wants.

I would say this, though, notwithstanding the magnitude of the discussions vis-à-vis the insurance industry, the one reality that is evident and clear in just about everybody's mind is that if we did nothing, the average premium would increase approximately 30 to 35 per cent this year. The actuarial reports themselves indicated a variance from 29 per cent to 44 per cent. We can give to the consumers and the drivers of Ontario whatever they want, but there is an associated cost, obviously.

In conclusion to Mr Philip, albeit not giving him the piece of paper that he specifically required, we will stand by our best guesstimate. That is not to demean in any way, shape or form the thousands of hours of investigation, analysis and consultation that ended up with the determination that if we did all the things that we said we are going to do and we will do hopefully in Bill 68, the average premium in Ontario will increase no more than eight per cent in urban areas essentially, and in many cases result in zero per cent.

No doubt the costs associated with Bill 68, both in terms of premiums paid or that will be paid by the consumers and the actual costs of implementation of various parts of it, will be there for everyone in the world to see when the insurance commission is finally established, God willing, and that is of course subsequent to Bill 68. It is the inherent reality that everything this government does we are accountable to the public and to the voters. We accept that responsibility, and to suggest that we do not is factually incorrect.

As I say, what is being promoted will be a testimony, if you will, to the will that this government has in dealing with the crisis of affordability in insurance in this province. There is no question that not everyone is going to be happy, but by and large it is the decision of this government and the responsibility to do what we think is fair and just and reasonable and balanced, mindful of the constraints and imperfections that we all have as human beings. We have, and I personally have, a lot of faith in Bill 68, and I am anxiously looking forward to the day that it becomes law.

Mr Philip: Mr Chairman, I have listened fairly intently to the pleonastic oratorical sonorities of the parliamentary assistant, and I could

not find in there a dollar figure, other than the rationalization that we really do not know and we do not have any one. But from my understanding of accounting, you may not have one, but if you add up two, three, four and five, then you can usually get a figure, if you have an adding machine or if you have even taken grade 5 arithmetic. We know \$95 million, we know \$46 million, and we can add that together and we get a figure.

My question to you is, have you costed the other factors? What is your cost expected to be in the first year in the operation of the commission as defined under this board? You must know, surely, how many staff you are going to have, what salary ranges you are going to pay, what the general overhead is going to be in terms of accommodation and so forth. Can you tell us, what is the commission going to cost you, what is your budget for the first year?

Mr Ferraro: This question was asked of the deputy minister on a number of occasions. A specific costing of that fact is not available. However, it is incumbent upon the government that if indeed we are going to pass major pieces of legislation, and I think everyone has to acknowledge that it is a major piece of legislation, there is a coincidental cost in administering that program. As a result, that cost will be borne, and indeed will at a future date be made totally public for everyone to scrutinize and/or criticize.

Mr Philip: Surely, though, in running an efficient government, or indeed as if you were a private corporation, or indeed if a crown corporation were to appear before the standing committee on public accounts, which I chair, we would ask them, what are the cost projections for the coming year and how much is this program going to cost you and what are the payoffs going to be vis-à-vis the cost?

I find it very difficult. How can I possibly vote for a very elaborate tribunal system which you have set up, a commission system, if I do not know what it is going to cost? If it costs me \$5 to save \$1, it just does not make any sense, as any accountant would tell you or as any businessman would tell you.

I ask you, how can you possibly have an elaborate system set up under this bill without even having at least a figure as to what the operational costs are going to be of the system that you are proposing? Every other business does it. You do not go out and spend money on a program—we had the Ombudsman appear before the standing committee on the Ombudsman, as Mrs LeBourdais would tell you. The Ombuds-

man asked for expanded jurisdiction. The Ombudsman could project very precisely what the benefits would be of that expanded jurisdiction and what the increased case load would be as a result of this expanded jurisdiction and what the costs would be to the taxpayers of providing that. We could then say, is it worth it to expand the jurisdiction at X dollars in exchange for getting this benefit?

Not only do you not have any kind of figures to show that this is going to reduce premiums—you say eight per cent, but we have not yet seen the research that shows the eight per cent. The minister says eight to 50 per cent, but he does not have any figures. The insurance companies say they are going to save \$500 million on litigation costs, but they have not tabled any information on that.

I ask you, how can you possibly have a program that you have not even costed? I mean, how do we know this bureaucracy you are setting up is not going to cost the taxpayers a lot more than anything that they might save, if they in fact do save?

Mr Ferraro: I guess I could answer this way. In our view, we have a responsibility, assuming the bill passes—and that is an assumption that, quite frankly, I hope becomes a reality—to ensure that this legislation and all the things that we are indicating to the taxpayers of Ontario will become a reality. That will require some additional personnel, no doubt, and expenditure. However, there will be a lot of, if you will, transfer from the present department of the superintendent of insurance that we have right now.

1450

Indeed these costs will be reasonable, bearing in mind that the amount of premiums that people paid last year was something like \$3.8 billion. I think when one looks at it in proportion, yes, there will be a charge, there will be a cost, but in proportion to the magnitude of the taxpayers' dollars that are spent on insurance premiums, I would say it goes without saying that it would be significantly less.

I guess the one fact that I stand by—and Mr Philip is right, in some cases people will receive significantly higher increases than eight per cent, but in fairness, I think as well a lot of people will receive significant deductions below what they are presently paying. Essentially that will be in rural areas, I acknowledge that, but on average and on balance, the vast majority of the 6.2 million drivers will receive zero per cent in rural

areas and eight per cent in urban areas. That is one figure that we have to deal with.

While there may be a concern about the administrative costs, and I share that concern, in my view, in the next year or so we will know exactly and definitively what those costs are, but in the interim they will be as reasonable and as cost-effective as the minister and the ministry would like them to be.

Mr Philip: I occasionally watch, on channel 10, Maclean Hunter, the council debates on the city of Etobicoke, and indeed the Metro debates, and at times people will come forward, or some councillors may at times come forward, and say, "We would like such and such a program." The first thing that is always done is that they ask the staff to cost it.

I say to you, how can you possibly ask us to pass legislation spending millions and millions of the taxpayers' money without knowing what this legislation is going to cost?

Can you even tell what the startup figures of the commission will be for the first three months? What have you budgeted for the first three months of this commission? What is it going to cost the taxpayers for the first three months? You say that there are going to be some transfer costs from the old system to the new system. Fine. What are they? Surely you can put a dollar figure on that. Tell us what this program is going to cost.

Mr Ferraro: I do not have access to a budget for the insurance commission. One is being developed.

I can tell Mr Philip, and Ms Parrish has helped me somewhat, that the present cost of the department of the superintendent of insurance is around \$5 million, I believe. That is including the costs of the Ontario Automobile Insurance Board.

Mr Philip: What does that tell us? You are asking us to vote for legislation without telling us what the legislation is costing. Quite frankly, I find that irresponsible.

How do we know that it is not going to cost the taxpayers, to administer this bureaucratic thing that you are setting up, more out of tax money than anything they could possibly hope to save? It is questionable. You cannot even show us the figures that they are going to save. But even if they were going to save something, how can you expect us to vote for something that is supposed to save somebody money when you do not know what it is going to cost them?

You are asking us to take money out of one pocket on a premise that somehow we are going

to have money put into the other pocket, but you are not quite sure, because that money is going to vary between eight and 50 per cent and you are not quite sure how much that would be as compared to what it would have been if you had not done this intervention. At the very least, you should be able to tell us, what is the commission going to cost us?

Mr Ferraro: I can respond this way. First of all, selective information has always made—I find myself having to correct. Mr Philip is right. However, the variance in premiums will be significant reductions to an average of zero per cent in rural areas, eight per cent on average in urban areas, and yes, some people will pay higher than eight per cent, but it is average.

I would answer this way, and again, I hope I am not being totally redundant. The one fact that I think is easily understandable in this whole scenario—and there is a wide variety of actuary reports, opinions, estimates, costings, and we saw this with the various commissions and the OAIB findings, that the degree of variance is substantive in many cases—but the one fact that is pretty well accepted is that if we did nothing, premiums on average would increase a minimum of 30 per cent in this province. We are saying that on average it is going to be zero per cent and eight per cent. That is one fact and figure that I quite frankly stand by. I suggest that if it is a guarantee, if it is a certainty that Mr Philip wants, that is about as reliable a guarantee or figure that you are going to get.

Mr Philip: And your source for that?

Mr Ferraro: Source for the 30 to 35 per cent?

Mr Philip: Yes.

Mr Ferraro: It is the number of actuarial studies that we have, including the OAIB. The range was 29 to 44 per cent, Mr Philip. The government took 30 to 35 per cent, and that is about as reliable a figure and source as you are going to get, I suggest.

The other source is the government's position that on average it will be zero and eight per cent, and we fully expect insurance companies to live up to that. If they do not, quite frankly, the alternative is very clear as well.

Mr Philip: Those actuarial studies that you are claiming project these very large increases—

Mr Ferraro: Yes.

Mr Philip: —they were done based on information provided by the insurance companies, which have a vested interest in obtaining this legislation, and also based on quadruple in-

creases in the income and profits to those insurance companies.

Mr Ferraro: Ms Parrish maybe can answer that. On what assumptions were the actuarial studies done? Perhaps Ms Parrish can—

Mr Philip: You know what you remind me of? You remind me of the guy who says, "Look, I need X number of atomic bombs because if I don't have X number of atomic bombs there is likely to be a war and I'm not going to be properly defended." You build up a paper tiger and then you say, "If I don't do this, I'm not going to be able to overcome the enemy." It is like the other side providing all the ammunition for your defence.

My submission to you is that it is not either/or in the way that you said. The choice before us is not, "Take this legislation or have large increases in auto insurance." The choice is: "Does this legislation in fact reduce the insurance? Does it protect the consumer? Does it give more benefits to that consumer or does it remove benefits from the consumer?" Indeed, the more important question is, "Are there other alternatives that are better than this legislation that we can measure, that we can look at, and that might provide the very kinds of things that we want to provide?" So it is not an either/or situation. It never is in politics. There is a variety of routes that can be taken.

What is a certainty is, first, that you have not been able to show us any kind of figures that actually show what kind of savings, if any. We now know there are not going to be savings, or at least not the savings the Premier promised in the last election. We know that figures are being plucked out of the air by the minister, who chooses not to appear here, and that you have not even costed what this program is going to cost us as taxpayers. I say that that is irresponsible. No city council would introduce a budget, would introduce a bylaw or any form of new program, without at least saying, "Here's what it is going to cost." You have not done even that.

I can tell you that I will be going to the Provincial Auditor and asking for a full study of why it was that you have not costed your program; why it was that you do not have clear objectives that can be measured; why it was that you have not looked at the various alternatives to this legislation to find out if there are more cost-efficient ways of achieving any kind of objectives that you may have. I will be asking the Provincial Auditor to do a study of that, and I can tell you that if it is anything like the kind of report

that I think we will get in a year—admittedly, it will be a year, a year and a half's time—

Mr Kormos: After the election.

Mr Philip: —after the election—but we will see this government roundly, soundly condemned by the Provincial Auditor for operating what has to be the most inefficient, foolish type of program.

1500

The idea of asking for a major change without knowing what that major change is going to cost, I think, with all respect, is absolutely irresponsible. There are two people you are supposed to be protecting, and they are one and the same. The people that you are trying to protect in terms of human rights and services are the voters out there, the residents of Ontario, but the voter is also a taxpayer. I say to you that any government that introduces any program without knowing what it is going to cost is acting completely irresponsibly and should not be in charge of managing the store. You do not deserve to be called a government if you cannot know what programs are going to cost.

Mr Kormos: But they are only following orders, Ed.

Mr Philip: This is a massive giveaway to the insurance companies. You remind me of the old governments that used to say, "If we throw X number of dollars to a certain industry, it's going to create more jobs." You say, "How many jobs?" You do not know and then, later on, the auditors come along and they say, "Well, it didn't create any jobs after all," and so you squandered a few million dollars.

This is more than a few million dollars. You are talking about major amounts of money from the taxpayer into the hands of the insurance companies, without any proof whatsoever as to your administrative costs and without any proof that you are going to have a substantial savings.

Mr Kormos: And the victims with no compensation.

Mr Philip: And with even less compensation than before to the victims.

My question to you is this. We have had major statements made publicly by the minister. He has a habit of throwing around figures that are really open to question. When you arrive at a figure that ranges between eight per cent and 50 per cent, one would say that is a fairly large margin for error.

We have 227 briefs. Most of them, as you have admitted, are objecting to this. We have had the insurance industry making advertisements about the bill—

Mr Kormos: Full of lies.

Mr Philip: —which I do not think they have been able to substantiate. We have had Liberal members on the committee echoing the contents of those advertisements, and I ask you, since there is considerable question about the research that has been tabled, about the lack of research that has been tabled, about the very basis of this legislation and why it was introduced in the first place, where is the minister today and why is he not here to answer our questions?

The Chair: After you respond to that, I am going to turn to Mr Sterling.

Mr Ferraro: The minister wanted to attend, quite frankly.

Mr Kormos: You insisted on coming.

Mr Ferraro: However, I talked to him and convinced him that I wanted to earn my \$9,000. He was gracious enough, quite frankly, to give me the responsibility of carrying this bill and I am grateful to Mr Elston for that.

Mr Kormos: Next he is going to give you herpes and you will thank him for that.

Mr Ferraro: I regret that I am not as good-looking or perhaps as bright as the minister, but I ask my colleagues, notwithstanding my shortcomings, to try to be patient.

Mr Philip: I think that the 227 people or organizations who made presentations are less concerned about the appearance of the parliamentary assistant vis-à-vis the appearance of the minister and more concerned about what is inside the head than outside the head. That is where they may want to make their measurement. I say to you that they have raised a number of questions.

Mr Ferraro: My wife agrees with you.

Mr Philip: They have made a number of proposals. Your amendments today that you have tabled do not respect these proposals, do not address those proposals, and I ask you, where is the minister today? Do not give me the flippant answer that you talked him out of coming. I would like to know where the minister is today and why he is not here to answer questions raised by the 227 people and organizations.

The Chair: Mr Ferraro and then Mr Sterling.

Mr Ferraro: I say again, and I do not mean to be flippant, I consider it an honour to be here and I am grateful to the minister for giving me the opportunity to be here. The minister will be available. There is no doubt about it, and the member knows fully well that in third reading or indeed in debates in the House, the minister will be there to acknowledge and/or respond to any

and all concerns, as he has been in the past. It is not unusual for a parliamentary assistant to carry a bill in committee. I think the member would have to acknowledge that.

I would say, vis-à-vis not getting the responses or answers that the member of the opposition wants, I am not sure, quite frankly, irrespective of the fact of whether it is me or the minister being here, that Mr Philip or any other member of the opposition is going to get the answer he wants, because the position of the government is not his position. Perhaps in many issues the two are not complementary or identical, obviously.

Mr Philip: If I may just have one last comment, it is not uncommon for ministers to hide. We know that, at least with this government, the Attorney General (Mr Scott) hides all the time from the public and from questioning by members of committee. We know that under Sunday shopping, the former Solicitor General, the member for London South (Mrs E. J. Smith) was very scarce and unavailable to answer questions in committee.

Mr Runciman: She was in Lucan.

Mr Philip: Usually when you have cases like that, you do not have the minister going out and making public statements outside the committee. In this case, we have had a minister make a whole lot of public statements about how wonderful this legislation is. Some 227 groups and/or people have come forward with their presentations and they had some very specific questions and comments which they wanted addressed, not by the parliamentary assistant but by the minister. I say to you, why is the minister at least not here during our initial debate to answer those questions?

If the minister feels that he cannot answer the questions and he wants to hide from the public, hide from the committee, then so be it. What is the minister doing today that is so much more important than being here then and answering and responding to the comments and questions of those 227 groups and people?

The Chair: Mr Sterling.

Mr Philip: Does the parliamentary assistant have an answer?

The Chair: He has answered the question twice.

Mr Philip: He has not answered. Where is the minister?

Mr Ferraro: I was not totally aware of his agenda today, but I can say this, I got up at seven o'clock this morning and had a meeting with the

minister. He was already in his office. Quite frankly, he is busy.

Mr Philip: I want to know what is so important that he cannot be here.

The Chair: Mr Sterling.

Mr Sterling: I would like to ask a question immediately, but I have some comments to make. I was extremely impressed with a number of submissions, but probably one of the most impressive submissions was that made by Ralph Nader who, I believe, is a person who does not have an axe to grind and is probably one of the greatest consumer advocates in North America, and has proven that. I truly believe that he follows an issue out of genuine conviction and I do not think his credibility can be attacked.

He submitted a number of questions to the minister and I would really like to see answers to those questions. Can we expect to get an answer to them?

Mr Ferraro: It is my understanding that the minister responds to all specific requests, assuming they are in writing. If indeed Mr Nader has made a request of the minister in writing, I do not have any hesitancy to say there will be a response.

Mr Sterling: It would be sort of helpful before we entered into the clause by clause.

Mr Ferraro: If Mr Sterling is saying that Mr Nader sent the minister a letter asking for a response, then I feel fairly comfortable saying that there will be a response.

Mr Sterling: We asked Mr Nader—I am not certain who actually posed the question—if he would put the question down. He referred to a number of questions. I think it came through the committee. I think it would be part of the committee process to have those questions answered.

Mr Ferraro: In fairness to Mr Sterling, it is a legitimate request, but I would also have to say that of the hundreds of presentations the committee had, there were a number of questions posed. It would be equally incumbent then upon the ministry to respond to all of them and I cannot sit here and tell you that all of them will be responded to individually. We would like to think that in the course of the debate on this bill and indeed in the course of certain amendments many of those questions will be answered, but each one specifically, I am not sure.

Mr Sterling: How many written questions did you receive from witnesses during the hearings, other than Mr Nader? I did not see any. I only saw Mr Nader's.

Mr Ferraro: I think there were a number of presentations that had questions of the government, quite frankly, and I say that, with all candour, the exact amount I do not know.

Mr Sterling: So the answer is, we are not going to get answers to Mr Nader's questions.

Mr Ferraro: No. The answer is, if there was a specific request in writing to the minister, I am sure he will respond.

Mr Sterling: Would you respond to that tomorrow morning, please?

Mr Ferraro: I will find out if there was a specific letter—

Mr Sterling: And when can we expect it.

Mr Ferraro: —from Mr Nader to the minister and, indeed, we will get some answers.

Mr Sterling: I wanted to comment briefly with regard to the hearings. I just wanted to say that, of all of the hearings that I have been involved in in committees over the past 12 years, I thought the quality of the presentation was extremely high in this committee. I thought that a lot of them came from people who did not have an axe to grind but felt genuinely concerned about people whom they were not hired to protect; from people who did not have, really, any future benefit to gain. Therefore, I was extremely touched by many of them.

1510

As I said, Ralph Nader presented what I thought was a tremendous brief to this committee. I guess what has stuck in my mind most about it was his revelation to the committee that in the United States this route was taken by 18 states in the 1960s and 1970s and that two states had backed off, and the overall experience has been that premiums are higher in no-fault states than they are in fault states.

There were so many good submissions; the one from young Jeremy Rempel and his father with regard to their concern, not for Jeremy but for other people who did not have as severe a head injury as Jeremy suffered. They were genuinely concerned about the fact that this legislation was going to severely restrict many people who had head injuries in the future.

David Slater, who was hired by this government to present to it its first real report on insurance and reported on auto insurance back in 1986, said quite frankly to the committee he did not believe that no-fault insurance would lower premiums. He saw premiums as being higher, and in addition, layering was going to be necessary in order for people to protect their

income if they were victims of an automobile accident.

Albert Roy, a former MPP, a former member, a former critic of the Attorney General, came in front of us and told us about one of his clients, a business person who, under the new system, would have lost something like \$100,000 as compared to the old system; where his victim was knocked out of her business, was not able to carry on as an employee, was earning something like \$50,000 or \$55,000 a year, and under this system would not be protected from that. That is, of course, what David Slater was talking about, the fact that small business persons, really most people, are going to have to go to their broker and buy not only an auto insurance premium but another insurance premium to insure themselves against loss of future income.

What bothers me about that more than anything is that this system is not going to protect the people who really need to be protected, because the more well-to-do, the smarter, will get that extra layering of income protection. It will be the person who most needs the protection in our society who will forgo and not buy that layering of insurance, will not insure himself about future income loss. I guess that is one thing that really bothers me about this legislation.

One of the very basic reasons that I ever did become involved in politics was to try to see equality as best as possible, and in recognizing that, not help people who can help themselves but help the people who cannot help themselves. I really see this as a retrograde step in that whole thing.

In hearing all the evidence and drawing it together and trying to figure out what is happening, in my view, Bill 68 is the introduction of government-run automobile insurance. We tell a person who wants to drive in our province, "You must have automobile insurance." We tell the insurance companies what they can charge and what profit they may get. We tell the customer what he can receive in the end. I do not know how much closer you can get to a government automobile insurance scheme.

Mr Runciman: Rick calls that free enterprise.

Mr Sterling: I do not quite understand that.

The other part that I do not understand, and my colleague Mr Runciman alluded to it as well, is that if you are going to be so heavily involved in running a scheme as we are in Bill 68—we are controlling the benefits, we are severely restricting the number of people who can access the courts to have a court give a discretionary fee—we are mixing our systems up. We are saying that if I

am somehow injured on the street, I am the innocent victim of some kind of other mishap in society, I am entitled, as a citizen, to something like \$560 or \$600 a month if I am disabled and unable to work. If I am injured and unable to work as a result of being involved in an attack by a criminal during an armed robbery or an unarmed robbery or somebody breaks into my home and hits me over the head, I am entitled to up to \$1,000 a month. Yet if I am in a car—and this is essentially a government-run scheme, and it is controlling all the strings associated with it—whether I am at fault or not at fault, I am entitled to something like \$2,000 a month.

I was an engineer before I was a lawyer, and sometimes I used to get chastised in cabinet when I would go from point A to point B to point C and I thought that the next point was D. I used to get chastised from time to time by the former Premier for thinking like an engineer rather than thinking like a lawyer or a politician. But I do not understand where you get to point D on this plan. What you are doing is setting up a totally different kind of regime for people who are injured and are perhaps going to be at the bottom rung of the ladder in terms of our society. If you were at the wheel of a motor vehicle and you were at fault and you injured someone else or you injured yourself, I do not understand the difference between that and what happens to you in other circumstances. It just does not add up to any good sense.

That is, I guess, the philosophical problem that I have with going to a no-fault system, which benefits people who are at fault in an automobile, whereas in the rest of society, in the rest of kinds of conditions whereby someone may be injured through no fault of his own, he receives far fewer benefits from society. The whole kind of thing does not add up. I do not understand why, because you are behind the wheel of a car, you should gain more from society than if you are on the street and someone comes up and hits you and you are unable to sue him because he does not have any money or is not insured. The result is entirely different.

I think that there are real problems when you start sectioning out different parts of society and treating them differently when they are at the bottom of the ladder or they are injured—in this case, as a result of somebody else on the street or because they caused the accident in this particular case. So I have a really difficult time philosophically with the no-fault and the benefits that the person causing the accident receives under this plan. It makes me even angrier when I

see that the innocent person who is hit as a result of the person who causes the accident is in fact being robbed by the person who causes the accident, because you have said that there is a redistribution of where the benefits of this plan go to. It is clear from what we have heard that the average benefit is going to be something like half of what it is under the present-day law.

1520

I had a talk briefly with the Leader of the Opposition (Mr B. Rae) on this issue some time ago and we both agree that there are really two steps or two ways you can go on this issue. One is to have a government-run system, straight and forceful. The other is to leave it up to the private sector and impose upon it what Ralph Nader said: strict reporting mechanisms so that you know what is going on, some kind of review mechanism so that you can keep your eye on them and perhaps some kind of a complaints process to deal with insurance companies that step out of line with individuals.

I really think this is a mistake. I believe we are on our way down a slope headed right for public auto insurance. I believe we are on our way down a slope for more and more government subsidization, because the evidence we have heard, even from people who have been hired by the government to report to it on government insurance and the experience in the United States, is that premiums will be higher under a no-fault system than a fault system. There will be pressures not only on this government but, I know, the next government, which hopefully will come into play in the next six or seven months.

Mr Kormos: It will go public.

Mr Sterling: At that time or in the future as premiums undoubtedly will rise in this scheme, there is going to be pressure on future governments to subsidize to a greater degree the auto insurance premium. I guess that can be done in any number of imaginative ways. The government has found three ways now: through workers' compensation, through the \$90-million subsidy and doing away with requiring insurance companies to reimburse OHIP and doing away with \$240 million in auto insurance premium tax. It will find ways in the future to subsidize further the auto insurance industry.

If you are now going from 20 per cent or 25 per cent subsidization, which is where I estimate it is now in terms of subsidy, the subsidy will rise and rise, depending on the political pressures, and we will be into a government-run scheme, because it will become obvious to everyone that you cannot

go above a certain amount of subsidy before you take over the whole system. I fail to see the logic involved in this whole thing.

Lastly, Mr Ferraro, I appreciate the position you are in, but I think there is some real truth and validity to the comments Mr Philip made, not about your ability to handle the issue or to answer the questions, but I think there are some real problems in terms of an issue which the auto insurance issue has been injected with, and that is that there are political decisions to make on this one.

On issues where there are fewer political decisions to make, we can deal with a parliamentary assistant in terms of the clause-by-clause debate. Quite frankly, the danger we find in opposition in bringing forward amendments right now to you and to this committee is that you, sitting in that position, do not have the same discretion as a minister would have to accept those amendments based on the argument that would be presented.

If we present those amendments at this time and you reject them, it will be more difficult for the minister when we put this into committee of the whole House—as it will undoubtedly be when we return the bill to the House—to accept any amendment at that time. In some ways we will paint him into a corner because of the decision you may make here at the time when we present that amendment. So we are in some ways very reluctant to present particularly the major amendments at this stage of the process for those reasons.

My last question would be, do you contemplate any further amendments than you have given us today?

Mr Ferraro: The answer to the last question is that there conceivably may be other amendments that will be presented by the government to the committee later this week. I cannot say definitively, and I say that in all honesty.

Mr Runciman: It is political gamesmanship.

Mr Ferraro: The only thing I can say is that the government is looking at different aspects, quite frankly, of the final product, if you will, and indeed some further investigation is necessary before a final determination is made.

Mr Runciman: Three days left and you cannot tell us? This is gamesmanship.

Mr Ferraro: Mr Chairman, very briefly, I want to say to the honourable member that I do respect the honourable member and his opinions. I really do. I would say that while I respect his views, I do not necessarily agree with his

conclusions. If, indeed, one of the conclusions is that this is public auto insurance, I do not share that view.

Finally, just to digress a little bit, Mr Philip asked at length about the costing of it. My staff, being efficient, as they always are, were good enough to give me—I am not sure this will answer Mr Philip's concern entirely—the voted estimates for 1989-90 to share with the committee.

By way of premise, everyone will know that the commission and the commissioner—which essentially is an amalgam of the old, albeit somewhat young, Ontario Automobile Insurance Board and the office of the superintendent of insurance in the Ministry of Financial Institutions—indicated that for the year 1989-90 the approved estimate for the board is \$6,427,500, and for the superintendent of insurance division it is \$4,678,100. So at the very least we have a rough budget, if you will, for the new superintendent of insurance and the commission of \$11,105,000.

Mr Runciman: That is pretty rough.

Mr Ferraro: Everyone acknowledges that some of that cost will no doubt be assessed by the insurance commissioner to insurance companies, and yes, I acknowledge that would be a cost that would have to be in the rating system or the filing system that inevitably would be paid by the consumer.

The Chair: Moving to clause by clause discussion, I have a number of government amendments proposed, and the first one that I have before me starts with section 3. Can I get agreement that sections 1 and 2 of the bill shall carry? Carried.

Sections 1 and 2 agreed to.

Section 3:

The Chair: I have a government motion on section 3. Mr Nixon.

Mr J. B. Nixon: There is actually an amendment to subsection 2(3). I think that is what you are referring to.

The Chair: I am sorry. Okay. It is section 3 of the bill and it is subsection 2(3) of the act.

Mr J. B. Nixon moves that subsection 2(3) of the Insurance Act, as set out in section 3 of the bill, be amended by inserting after "administer" in the first line "and enforce."

Mr J. B. Nixon: It is a technical amendment, as I understand it, to clarify that the job of the insurance commission includes not just administration but enforcement of the act and regulations.

1530

Mr Sterling: Could I just ask the researcher—

Clerk of the Committee: It is not the researcher, it is the legislative counsel.

Mr Sterling: Who put the summary of the recommendations together? Was that legislative research?

Clerk of the Committee: The rationale?

Mr Sterling: I just was wondering what order they did this in. Maybe somebody else in the committee can help me.

The Chair: The name is McNaught.

Mr Sterling: We just received this today, I understand. Is that correct? Another problem we are having here is that we received, I guess about one or two hours ago, the amendments the government wants to put forward. I have just received sort of a synopsis of what the various groups have said. Is this in the order of the bill?

The Chair: From my understanding, it follows fairly closely to the sections of the bill. That is, subsection 3(2) is the composition of the commission. Subsection 2(2) was a recommendation by the Consumers Association of Canada. Their recommendation was, "The Ontario Insurance Commission should be composed of the commissioner, the superintendent, the director and a representative from consumer advocate groups." But I do not want to get into that yet.

We are now dealing with a government amendment to section 3 of the bill, subsection 2(3) of the act, dealing with adding the words "and enforce" after the word "administer."

Mr Sterling: I have no problems, but I do not quite understand it all.

The Chair: Shall the amendment carry? Carried.

Mr Sterling: The parliamentary assistant said at the opening he was not going to go through these and explain them. I do not think that is fair. Could we run through all the government motions here without carrying them? Can you just explain what you are doing in them?

The Chair: If I can be of any assistance. At the bottom of the page, there is a rationale. Are you looking for him simply to read that rationale or to expand on that?

Mr Sterling: To expand upon that.

The Chair: It was moved by Mr Nixon. He may want to expand.

Mr J. B. Nixon: This amendment is intended to clarify the intent, which is that the commission, in the course of administering the act and

regulations, also enforces the act and the regulations.

Mr Kormos: I have a question in that regard. Does this mean that persons who have grievances, who would want to seek enforcement, are subject to the whim of or the absolute control of the commission? That is to say that the commission could decline, for instance, to respond to a complaint and that this person would have no independent recourse. What happens in that instance?

Mr J. B. Nixon: Let me give you an example. Under the regulation-making power of the bill the government, through the insurance commissioner, can declare certain activities by insurance companies to be unfair practices. If an unfair practice is found to exist, the insurance commissioner may make his decision on his own initiative or upon complaint by a consumer.

The intent is that the commissioner has the ability to enforce fines and penalties and jail sentences. Given that it is a statutory power of decision, if the commissioner refuses to act or acts in an arbitrary manner, that is reviewable by the courts. It is judicially reviewable. I believe I am correct.

Mr Ferraro: Perhaps we could enlighten Mr Kormos a little further. I will ask legal counsel for the ministry to expand a little bit on that.

Mr Nigro: The present Insurance Act now has the superintendent having the power to enforce the legislation, if you look at subsection 2(1) which is repealed by this legislation. In drafting the amendments, we used the term "administer" thinking that enforcement would be captured by that term.

In consulting with our colleagues at the main office of the Ministry of the Attorney General on another matter not related to this legislation, the question of enforcement of the Insurance Act became important. We wanted to ensure that the superintendent would not be left with less power at the end of the day than he already has. The superintendent is the appointed officer of the crown to enforce this legislation, so when you look at the unfair acts and practices, as Mr Nixon has referred to, you will see it is the superintendent who has that right.

I think it is quite correct to say that if he or she declines to enforce a provision under the act, an application for judicial review could be brought if there was a complaint. I would also point out that the office of the superintendent does have a lot of consumer complaints officers now.

Mr Kormos: Does that mean a person who was not satisfied with the action the commission

took in response to a complaint would have to go through an administrative court procedure?

Mr Nigro: I think it means that if someone feels the superintendent has not properly exercised his judicial power of decision in looking at an alleged unfair act or complaint, an application for mandamus, in technical terms, could be brought.

I would also point out that I do not think we have limited the rights of insureds or anyone else in this province to bring whatever other independent actions they have by including the word "enforcement." We have not changed the situation by including this amendment in the legislation.

Mr Kormos: That is what I was concerned with. I have listened carefully to what counsel has said, but I simply wanted to clarify whether the inclusion of "enforcement" made enforcement the monopoly of the commissioner. I look at the amended section 394, as proposed by section 77, and it appears to create an offence. What I want to make sure of is that counsel is saying that an individual, for instance, could swear an information under, let's say, the Provincial Offences Act charging somebody with an offence under section 394. He would not have to rely upon the superintendent or the commission.

Mr Nigro: I do not want to mislead the committee. I would want to look at that. At the moment, I believe a private individual can swear an information under the Insurance Act. Under the Ontario Automobile Insurance Board Act, I think you need the permission of the board to do that. That is not required under the Insurance Act. I do not believe we have changed that. In other words, in the Insurance Act you can still swear a private information and bring a proceeding in the provincial court as an individual. I do not believe we have changed that in the statutes. That certainly was not our intention.

The Chair: Can we move on? We have had some discussion after we carried the amendment. Shall subsection 3(2) as amended carry?

Mr Sterling: Before we get there, we have carried section 1 and section 2 of the bill, I understand. Right?

The Chair: That is correct.

Mr Sterling: Can I ask about subsection 2(2), the composition of the commission. Under this bill it says, "The commission shall be composed of the commissioner, the superintendent and the director." The Consumers Association of Canada suggested that there be a representative from

consumer advocate groups. What was the reason for rejecting that suggestion?

Mr Ferraro: As opposed to me being a ventriloquist, I will have Ms Parrish respond to that.

Mr Kormos: Why change now?

Mr Philip: Better her than the insurance companies.

1540

Ms Parrish: Thank you, Mr Philip.

There is an accident benefits advisory committee which is created under this statute, and that would be a very appropriate place to have representatives from consumer groups to give advice as to the appropriate procedures for arbitration and mediation and also to choose who the people are who should be qualified to be arbitrators and mediators. I know the minister will think of consumer groups in that regard.

It is hard, frankly, to imagine a situation in which you would put a consumer group as part of the commission, because under the statute there are only three people who have statutory authority. One is the director of arbitrations, who has an appellate function in regard to mediation and arbitration. The second is the superintendent of insurance, who has specific regulatory requirements such as to inspect and examine insurance companies or to find unfair practices. The third statutory person is the insurance commissioner, and the insurance commissioner hears appeals from the superintendent but also does things, for example, like review rate control.

There is no tribunal in that sense. It is not like the Ontario Municipal Board, where there are 30 or 40 people who hear cases. Under this statute there are only three statutorily recognized people and those three people are the commission, so there is no place within the legal scheme for those people to exist. I think in the course of staffing the commission, choosing hearing officers and so on, they can look at consumers.

Mr Sterling: I understand. Okay.

The Chair: Okay. Shall section 3(2) as amended—subsections 1, 2, 3 and 4 with the amendment to section 3—carry? Carried. I want to check this out with legal counsel first. What am I referring to—section 3 of Bill 68?

Mr Revell: One of the most horrible problems of advising a committee is the numbering when we get into re-enacted provisions. I would recommend that if we went through and just carried section 2 of the act, section 3 of the act, section 4 of the act and then come back at the end

and carry section 3 of the bill, as amended, that would carry all of the problems of citation.

The Chair: Okay. Thank you. We are now dealing with subsections 3(1), 3(2), 3(3), 3(4) and 3(5). Shall all of section 3 carry? Carried.

I believe there is subsection 4(1) of the act to carry.

Mr Philip: I have a question on it. What is the procedure for the appointment of the superintendent of insurance under this?

Mr Nigro: The superintendent of insurance will be appointed by the Lieutenant Governor in Council. It is in the subsequent section. If I can recall Mr Revell's scheme, subsection 4(1) of the act has the appointment of the superintendent in it.

Mr Philip: Excuse me if I am incorrect, but my understanding of a document signed by the Liberals with the New Democrats a number of years ago was to the effect that the appointment of major quasi-judicial chairs, if you want to call them that, or appointments would be in consultation with the opposition parties. I am wondering why there is not some procedure for something as important as this to at least have some consultative process in the selection of what amounts to a major quasi-judicial position.

Mr Ferraro: Let me see if I can answer that. I think what you are referring to is the agreement that was made under the accord?

Mr Philip: Yes.

Mr Ferraro: Essentially, it ended with the election of 1987, to my understanding.

Mr Philip: But if an agreement is to change a parliamentary procedure, surely it does not end with that government. It is a procedure that is set in place and would be carried on by the same government if it happens to stay in office and, indeed, usually by all subsequent governments. What we are talking about is whether the opposition is consulted on what amounts to a key post or whether this is some kind of patronage appointment of some sort.

Mr Ferraro: I do not believe it will be a patronage appointment per se, Mr Philip, and certainly it will be up to the scrutiny of all to see when and if the appointment is made. I guess you and I are meant to differ on whether or not the rules as established under the accord are then incumbent upon any subsequent government. Quite frankly, I do not believe they should be.

Mr Philip: So on the agreement signed by the Liberals and New Democrats some five years ago, which said there would be an openness in

the way in which key posts were appointed, the moment you get your majority you no longer feel that you in any way have to be committed to that kind of openness. Is that what I am—

Interjections.

Mr Philip: We made it with whoever was willing to be flexible enough to sign the on the maximum—

The Chair: Mr Nixon?

Mr J. B. Nixon: I will wait till they have finished the discussion.

Mr Philip: It seemed to be fairly successful in getting a number of changes.

The Chair: I have Mr Nixon in response.

Mr J. B. Nixon: I do not interpret the so-called accord in the way Mr Philip does. My understanding of the accord provision is that it referred to appointments to agencies, boards and commissions. The appointment of the superintendent of insurance is an appointment after an open and full hiring procedure pursuant to the administrative guidelines for the hiring and employment of all civil servants, and is governed by the appropriate statutory regulations. It is not of the same nature as an appointment to, for instance, the Ontario Labour Relations Board. It is the hiring of a civil servant.

The Chair: Okay, section—

Mr Philip: No. I am sorry. I have a number of questions on this so please do not rush me, Mr Chairman. I have a right even under a Liberal majority government to ask questions on parts of a bill.

My question is this: will this post be advertised, as is the usual procedure with such governments as the Alberta government and even that right-wing, ultra-conservative government in British Columbia in the appointment of a major tribunal leader or chairperson?

Mr Ferraro: It is my understanding that the position, as it is a statutory appointment, will be in compliance essentially with the Public Service Act of Ontario, and in so doing would not preclude that direction, although I would say just in conclusion that it certainly is not the intent to use this as a patronage appointment. We would not want to preclude New Democrats, Conservatives, Liberals or anyone quite frankly from being considered under this act, and indeed the final decision will be made and will be subject to the scrutiny of all concerned.

Mr Philip: In preparation for the passage of this, have any potential applicants been invited to

submit a resumé or been asked if they might be interested in obtaining this post?

Mr Ferraro: There is presently a superintendent of insurance and he has taken another position recently, so subsequently the government will be looking for someone to take the position of superintendent. The normal bureaucratic proposal will be dealt with.

Mr Philip: Has anyone yet been offered the post?

Mr Ferraro: Not to my knowledge, but that does not say for a minute that someone has not been under consideration. But to my knowledge, no one has been as yet.

Mr Philip: Can you find out that information for us, because I would like to understand the procedure of giving—what does this position pay?

Mr Ferraro: It is essentially the equivalent of an assistant deputy minister position, in that category.

1550

Mr Philip: Which is how much?

Mr Ferraro: I am not sure. Can any of your staff help me with that?

Ms Parrish: I can check that. I do not occupy such an elevated position, so I do not know the salary level. It is an ECP-5 position. I can find out what the salary range for that is.

Mr Ferraro: It is probably more than the members get.

Mr Philip: I suspect that it is considerably more than what we get.

Mr Ferraro: And the security is a hell of a lot better too.

Ms Parrish: I suspect the salary range is probably from about \$80,000 to about \$100,000, but I will check that, Mr Philip.

Mr Philip: We have a post then that is worth \$80,000 to \$100,000. My experience in looking at these posts in the past is that \$100,000 is closer to it than \$80,000. Surely it would make some sense, with a post of this importance which this government is relying on as being kind of the cornerstone of its legislation, to have a fairly wide-open competition. I noticed, for example, that the Alberta government had ads in the *Globe and Mail* asking for applicants for the position of Ombudsman in that province. I would not in any way equate this with the—

Interjection.

Mr Philip: I did not apply, nor was I invited to accept the one in Ontario, I might add. I am

holding out for British Columbia. The weather is better there.

It would seem, though, that with that kind of position it might be worth while advertising and having a number of applicants from across the country, people who would be experienced in the insurance industry and/or the consumer areas of government. I would just like to know what the intent is. Where is the person coming from? How many applicants are going to be looked at? Has the government yet come to a conclusion as to what the job description exactly will be and what qualities you are looking for in this important position, which seems to be the cornerstone of your legislation?

Mr Ferraro: Let me answer that briefly by saying that it certainly is the intention of the government to get the best person for the job that we can get. I can only say with the utmost confidence that the process by which that will be done will no doubt be one of the fairest ones you can imagine.

Mr Philip: I would like to know the process by which this will be done. Are you going to advertise? You did not answer my question. Is there a job description of not just the duties but also the qualifications of the kind of person you are looking for? Can you table with us a copy of the job description? There may well be all kinds of people out there watching this debate on television who might like to apply. They might find out that they are not part of the little closed-door network of the Liberal establishment and they may not be offered the position. Perhaps if we were to let them know what the qualifications are, there might be a very good applicant out there who would like to apply.

Mr Ferraro: To answer your first question, I believe there is a job description available and I am in the process of ascertaining that for certain. Sure, anybody who wants to apply for the job by all means could send a request to myself and/or the minister and I am sure it will be considered. The intention of course is not to merely get someone who is either predominantly a New Democrat or a Liberal or a Conservative, albeit many of the appointments in recent years have not precluded someone of partisan stripe, if I may use that phraseology. The intent is to get the best person for the job, and by all means, anyone interested can apply, including yourself, Mr Philip.

Mr Philip: I certainly would not prostitute my talents by taking over, for the mere increase in my own personal income, a position to work under—

Mr Ferraro: Just in British Columbia.

Mr Philip: I think that under British Columbia—

Interjection.

Mr Philip: Let me say this then: I could live a lot better under BC's Ombudsman legislation than I could live under this shoddy legislation. I certainly would not accept a position simply for money to work under a piece of legislation that is not going to be in the interests of the public.

Mr Nixon: Do not apply for the job.

Mr Philip: The question was asked by Mr Nixon whether or not I intended to apply for the job. I thought he deserved a full answer.

Mr J. B. Nixon: I did not ask the question. Do not put words in my mouth.

Mr Philip: I have an answer to that but I am sure it is not printable.

Mr Ferraro: Could I perhaps clarify, if I may. I was handed a note and I was in error. Mr Wilbee, who is the superintendent of insurance at present, as opposed to taking another position, to be factually correct was seconded to another position. No decision has been made obviously as yet to replace him. The salary is in the 90s.

Mr Philip: Has anyone been offered the position yet?

Mr Ferraro: No.

Mr Philip: No one has been offered the position?

Mr Ferraro: No.

Mr Philip: Do you intend to advertise the position?

Mr Ferraro: We are finding that out for you.

Mr Sterling: Could I ask a supplementary on this? I notice the commission is made up of the commissioner, the superintendent and the director. Then when you read on in the legislation it says, "The commissioner shall establish and maintain a roster of candidates" for "the accident benefits advisory committee to conduct arbitrations under this act." Are these three people, particularly the commissioner, the superintendent and the director, going to be insurance people?

Mr Ferraro: We have had one appointment already, as I am sure you know. The commissioner is Don Scott, who is the past CEO of Clarkson Gordon, an accounting firm. So in that regard he certainly is a well-respected businessman, but to my knowledge—I stand to be corrected—he was never personally involved primarily with an insurance company. I think as

the standard, it would not necessarily make it mandatory. Certainly, some expertise in that area would be helpful, I would guess, but would not necessarily mandatory.

The Chair: Shall subsection 4(1) carry? Carried.

On subsection 4(2), I have an amendment.

Mr Nixon moves that subsection 4(2) of the Insurance Act, as set out in section 3 of the bill, be amended by striking out "administration of the commission" in the third line and substituting "administration and enforcement of this act."

Mr J. B. Nixon: This is basically a technical amendment that is of the same nature as the previous amendment to subsection 2(3), which was previously approved.

The Chair: Shall subsection 4(2)—

Mr Philip: Wait a minute then. You have introduced a whole bunch of amendments on very short notice today. I have a right and I want to consult with my colleague here.

The Chair: Okay. Any further discussion on the amendment?

Mr Sterling: I think the question is, how do you put somebody in charge of enforcing the act. Is that your concern?

Mr Philip: My concern is that often in tribunals one of the criticisms has been that there is a problem in having the enforcement and the judicial function in the same body. I guess my question to the parliamentary assistant to the minister is, is there a problem here?

"The superintendent is the chief administrative officer of the commission and shall carry out such duties respecting the administration and enforcement of the commission as may be assigned." I guess the problem I have with a quasi-judicial body is that if enforcement is directly under the same person who is responsible for administration and adjudication, is there a conflict in role and how do you intend to ensure that there is not a conflict in this instance?

Mr Ferraro: I do not believe there is a conflict in role. I think it probably addresses one of the concerns, and that is, as a minor point, one of economics. We think the superintendent is capable enough to deal with a full range of responsibilities without being put into a position of conflict.

1600

Mr Philip: I guess my concern is, can you be a judge and policeman at the same time and will the enforcement be the enforcement of quasi-judicial decisions?

Mr Ferraro: Are you talking about essentially the mediation process?

Mr Philip: Yes.

Mr Sterling: This enforcement probably would relate more to the enforcement of rates on a company in a general manner, would it?

Mr Ferraro: No.

Mr Sterling: Perhaps we can have an explanation.

Mr Ferraro: Ms Parrish perhaps can expound on that.

Mr Sterling: What enforcement are you envisaging here?

Ms Parrish: Rate approval is only done by the commissioner. The enforcement of a mediation or an arbitration order would be enforced in the same way as you would enforce a judgement of the courts.

I guess the enforcement we are talking about in this section is specific enforcement powers, for example, to investigate improprieties in insurance companies or potential insolvency situations. The act has a number of provisions that say the superintendent may, for example, order an examination of the portfolio of investments of a company to see whether or not it has overvalued real estate or other improprieties. The staff of the superintendent—obviously the superintendent personally is not going to examine all these companies—would bring forward the evidence and then there would be the right of a hearing, which would be subject to the Statutory Powers Procedure Act.

There is the capacity to appeal most of these decisions to the next level, which is to the commissioner. So there is a situation where evidence is brought forward and then if the company is dissatisfied, it can move up to the next level and have a number of these elements dealt with.

You are quite right in pointing out that in the conduct of the day-to-day work, the commissioner, the superintendent and their staff have to be very careful that investigations, for instance, are conducted in a way that is appropriate, and that those people who are making decisions are not tarnished by having certain evidence before them in an improper way that might be detrimental to the parties involved. But that is a problem that all administrative tribunals encounter and they have to have in place appropriate internal procedures to ensure there is fairness and the appearance of fairness in the enforcement of the statute.

Mr Philip: Will there be a separation under the superintendent of the enforcement and the mediation in terms of personnel? Will the mediators be the same people who are enforcing?

Ms Parrish: No.

Mr Philip: They will not be.

Mr Ferraro: No.

Mr Philip: So you are going to have two separate departments then. I am trying to get an idea of this bureaucracy. You still do not know how much it will cost. You are going to have the enforcement branch then and you are going to have the mediation branch.

Mr Ferraro: That is right.

Ms Parrish: I do not know if there is going to be an enforcement branch, but I—

Mr Ferraro: Different personnel, is it safe to say? You know more about it than I do, Colleen, quite frankly. There will be different personnel, whether or not there is a specific branch.

Ms Parrish: In the alternative dispute resolution section there is a provision that deals specifically with what happens if an arbitrator or mediator finds in the course of his job that, for instance, there is an unfair practice going on. You have a situation where in the course of a mediation or in the course of an arbitration you find out that it is not just a one-on-one dispute; it is a case of unfair practice or impropriety on behalf of the insurance company.

There is a section that specifically says there should be a reporting to the superintendent and then the superintendent has to carry out the enforcement of the unfair practices provision. It would not be the mediators or the arbitrators or the director of arbitration who would be carrying out that function. They do have an obligation to report and then the superintendent's staff would carry out the investigation and enforcement of the provision of the statute that dealt with punitive or enforcement investigative powers.

Mr Philip: The person who will be doing the investigation will be a different person than the person who accidentally in the process of mediation discovers a potential offence.

Ms Parrish: The person who would be doing the investigation—

Mr Philip: Of the alleged offence would be a different person.

Ms Parrish: Yes.

Mr Philip: Let me put it this way. Supposing Mr Smith is involved in a mediation. Mr Smith, under this bill, then says, "Oh, I've just

discovered something which is illegal or potentially untoward or improper" or something.

Ms Parrish: An unfair practice.

Mr Philip: An unfair practice. The mediator at that time then would—what, stop the mediation process and turn in a report, and then an investigator would start investigating whether or not there was an improper or unfair practice on the part of the insurance company?

Mr Nigro: Just to be clear, the way the structure works is that the director of arbitrations is compelled to review decisions to see whether there are unfair acts or practices. If he or she discovers that there are acts that may amount to an unfair act or practice, they are referred to the superintendent. The superintendent's authority over unfair acts and practices is somewhat enhanced under this legislation, but it is not dissimilar from that which exists now.

Mr Philip: Would you explain what exists now, because I would like to know what the superintendent of insurance does presently, other than writing an odd letter to an insurance company saying, "It seems wrong that you've cut off John Smith from his insurance because he had three traffic violations."

Mr Nigro: Under section 78 of the bill, amending section 396 of the Insurance Act—section 396 is the unfair acts and practices provision in the Insurance Act—the superintendent, when it comes to his or her attention that a company may be committing any act or pursuing a course of conduct that is unfair or deceptive or that might reasonably be expected to constitute an unfair or deceptive act—and it is spelled out in the legislation as to what constitutes an unfair or deceptive act—may make an order. When he or she makes that order, that is a statutory power of decision. There is a right of hearing and there is a right of appeal. You can see that in extraordinary circumstances the superintendent can actually make the order prior to the hearing taking place using an interim order, limited-criteria basis.

Mr Philip: That is under the present act.

Mr Nigro: No, that is what we are doing under this bill. Under the present statute we have some of those powers. They are not particularly, in our experience, well defined or as clearly set out as we would like, and in some ways they are not as effective as we would like, so what we have done in this act is generally—

Mr Ferraro: Section 396?

Mr Nigro: Yes, section 396—enhanced the ability of the superintendent to deal with allegations of unfair acts and practices. We have

also defined in the legislation a provision that permits the proscribing of acts as unfair acts or practices, because in the examination of market conduct, we do not really believe that we can set them all out in the statute in any kind of exhaustive way.

Mr Philip: Can you tell me, under the present act, can the superintendent of insurance, if he or she discovers an unfair practice by an insurance company, order that insurance company to cease that practice?

Mr Nigro: Under the present act the language is "cease engaging in his business," referring to the insurer's business, "or any part thereof named in the order." That language is found to be, in practice, relatively restrictive, and we have changed that language somewhat to reflect more modern drafting and more modern regulatory regimes. The language that we use in the present act is similar to what we used in the Loan and Trust Corporations Act, 1987, and I think it reflects the modern regulatory environment.

Mr Philip: So are you telling me then that it is the language that is being changed but the powers are not being increased?

Mr Nigro: I do not think you would change the language without increasing the powers. I think that in some ways you would see the superintendent's powers are enhanced because they become more effective, because he or she can do things more easily and they become practically possible. So in that sense the powers of the superintendent, I suppose, have been increased. But certainly at least in terms of the drafting, the intention always was, and I think the drafting reflects that, to maintain the enforcement duties of the superintendent and to only ensure that they are enhanced in the sense that they become doable things.

Mr Philip: Would you agree that under the present act then the superintendent has the power to order a company, based on the merits of a particular situation, to stop doing it, to refund, to reinstate an insurance policy that may have been cancelled, to do all of a variety of things which an insurance company may have done which would be unfair to a consumer? Would you agree that they have that power under the present act?

1610

Mr Nigro: Under the present act—I am just looking at it—the superintendent has the power to order terms and conditions that would be consistent with the order to "cease engaging in his business or any part thereof." I think that is very limited. I do not know that the superinten-

dent could order terms and conditions that deal with reinstating insurers, etc., under that language. In fact, without expressing a legal opinion on the subject, my best advice would be that the answer to that would be no.

Mr Philip: I am not a lawyer, and maybe Mr Sterling could help me with this, but under the present act, "ceasing a practice," which are the words that you have used, to me, is the same thing as telling a company to stop doing something. I fail to understand what new powers you are giving with the present wording that the superintendent of insurance, if he wished to exercise his present authority, does not already have.

Mr Nigro: The words that I used, just to be straight on that, were "cease engaging in his business," because those are the words of the statute, and that, I think, is a different criterion altogether.

What we try to do in the new section 396 is put in a reasonable expectation of something that could result in a state of affairs that would constitute an unfair act or practice. So it becomes, I think, a little bit more of a proactive power than you find in the present situation. Now, I think, the superintendent is limited to acting in cases where the unfair act or practice is going on. I think he or she can be more proactive under the draft that you have in front of you now.

Mr Philip: Under the present act, does the superintendent of insurance issue instructions to an insurance company in the case of what he or she considers to be an unfair practice to stop that practice and to rectify any damage that might have been caused by that unfair practice? Is that not what is happening, albeit in very rare cases, under the present act?

Mr Nigro: Under the present act, the superintendent, after a hearing, has the power to make an order. The order would be limited to ordering that the person cease engaging in the business or any part thereof or terms and conditions that would be consistent with that statutory power.

Mr Philip: And would the terms or conditions in keeping with that power be to reinstate a policy or to carry on the business in keeping with certain guidelines that the superintendent might set?

Mr Nigro: I would think actually the superintendent would have a great deal of difficulty, under that power under the act as it is now drafted, in reinstating a policy.

Mr Philip: So you are telling me that under no instance does the superintendent of insurance at the present time tell an insurance company that it

may not do a certain thing, that it is not a fair practice and that it had better stop doing it.

Mr Nigro: I would distinguish, certainly, between what the superintendent can do under the statutory power of decision he has under section 396 and what a regulator can do in a regulatory environment using the suasion of his or her office. I do not work directly in the superintendent's office, but I know that the superintendent—Ms Parrish could certainly help me out here—regularly speaks to insurance companies about their practices and brings his office to bear in trying to get their practices into what, in the superintendent's view, would be acceptable in the marketplace.

Mr Ferraro: Mr Chair, if I may, I want to apologize to the committee and to Mr Nigro. I want to introduce Albert Nigro, who is a legal counsel with the Ministry of Financial Institutions. I apologize for not doing that initially.

Mr Philip: I guess my real question is that I wonder why you need this very elaborate bureaucracy to do something that was probably the intent of the original legislation to have the superintendent of insurance do anyway, with less bureaucracy and with less cost to the taxpayer. What am I getting for these extra bucks I am going to spend that could not be done anyway without this legislation?

Mr Ferraro: I am not sure that is a question for Mr Nigro.

Mr Philip: Maybe it is a question for you, then.

Mr Ferraro: It is political in nature, and we feel, quite frankly, that the new commission, commissioner and superintendent, and the process, will be much more beneficial, have much more clout, if you will, and power both to enforce decisions and indeed expedite decisions vis-à-vis the mediation and arbitration process and also have power to scrutinize just about everything insurance companies do and to approve and/or deny any and all increases. If they do not comply, there are significant penalties, and indeed so much so that if there is a blatant and continuing, shall we say, abuse of the consumers by an insurance company, it can result in a substantive action in the courts and substantive fines for the insurance company.

Mr Philip: I guess what I wonder about is, is it necessary to have an army to do what a rifle can accomplish? You guys had an opportunity to tinker with rent review. It seemed to be working somewhat efficiently under the old system, albeit it was not inclusive of as many buildings and so

forth as one would have liked. Then you created this huge bureaucracy which nobody can understand and which you need a ton of lawyers to go through. Unfortunately, the Conservatives saw fit to vote for it with you and create this bureaucracy which they now have second thoughts about.

I really wonder. You are setting up a very bureaucratic, complex system and I still have not heard an answer as to why simply correcting the present system—spelling out the powers of the superintendent of insurance, perhaps, if that is necessary—why it is necessary to set up this whole bureaucracy to do what you should be able to do anyway.

Mr Ferraro: We feel that, quite frankly, the present office of the superintendent of insurance, albeit it performed a good function, shall we say, it did not have the tools to do its job properly in this day and age. We anticipate and expect that this will be an efficient and lean structure. We are mindful and concerned about bureaucracy and the associated cost, but under the leadership of a gentleman who is very capable indeed, Don Scott, we anticipate that there will not be an army, and that the analogy to the rent control hearings and process will not be repeated. That example, I think, is an extreme one.

We anticipate that the mediators and/or the enforcement section, all of it, will be responsive to the concerns of the 6.2 million drivers in a reasonably quick fashion—30 days and 60 days for a report, whether it is in mediation and/or arbitration—and that the appropriate measures and teeth vis-à-vis enforcement would be in place. It is better.

Mr Philip: You say that it will be lean, and yet earlier, when I asked you the cost of this bureaucracy, you were not able to give me a dollar figure. Can you tell me how many employees are going to be involved then, since it is going to be a leaner system? Can you give me that figure then? I mean, we are voting for a \$90,000 a year appointment—

Mr Ferraro: I would not want to at this time.

Mr Philip: —who is going to have all of these powers to appoint all of these deputies and so forth to go out there investigating and making decisions. Can you tell me how many people are going to be involved in this process?

Mr Ferraro: I think it would be difficult for anybody to give you that answer initially, Mr Philip, from the standpoint that it is somewhat hypothetical as to what degree of mediation and, indeed, arbitration will arise, as a result of the

new rules in place. Certainly, I would not want to, at this juncture in any event, prejudge the requests from the standpoint of the commissioner, Mr Scott, and the significant input that he will have vis-à-vis the staffing and determination of specifically what type of process he would like to see in place. But there is no question that it will require a number of people. The exact amount I cannot tell you.

Mr Philip: We can assume from section 92 that at some point in time this bill is going to come into effect. The government has the number of troops and it is going to plow it through, regardless of whether the public likes it or not. Surely there must be some timetable then set up in the minds of the government to say when these people are going to be in place, how much it is going to cost, what are the salary provisions for each of them and how many, initially, when you open the office, are going to be on staff and say, “I have got X positions and I am going to have X staff and this is what it is going to cost me.”

1620

Mr Ferraro: Let me answer it this way, if I may—

The Chair: I have a point of order.

Mr J. B. Nixon: Point of order: It might be helpful, not only to me but to some other members of the committee, if you could remind us which section of the bill we are debating.

The Chair: We are on subsection 4(2) on the amendment.

Mr J. B. Nixon: Okay, just so that I am clear, it says “administration of the commission” and the amendment deals with changing that to say “administration and enforcement of this act.” Is that correct? That is the one we are dealing with?

The Chair: That is correct.

Mr J. B. Nixon: We have just spent 25 minutes talking about staffing and it is now on to section 92 of the bill. I am just concerned that we devote our discussion to a particular amendment and not the bill and not repeat concerns that we have heard many, many times. After all, you know that the rules of order require that a member be called to order when he becomes repetitious.

Mr Philip: Perhaps Mr Nixon was not here when I explained—

Mr J. B. Nixon: Oh, no, I was here.

Mr Philip: —my concern whether enforcement was to be done by certain people, whether administration was to be done by the same people, what was the distinction between the

quasi-judicial function and the enforcement function.

Then, of course, in dealing with section 2, since the superintendent, as the chief administrative officer, is to carry out such duties as respecting the administration of the commission, I thought that the taxpayers out there would like to know what the cost of this administration would be. It seems like a reasonable question to ask before we pass this section.

Mr J. B. Nixon: Point of order, Mr Chairman: It is clearly repetitious. Please call the member to order and ask him not to repeat the material that has already been discussed.

Mr Philip: Since Mr Nixon is either a very slow learner or not a very good listener, I am repeating, since he is saying that I am out of order—

The Chair: The chair has not made a determination whether you are out of order or not yet.

Mr Philip: I am trying to, despite the interruptions, rude as they may be, by Mr Nixon—

Mr J. B. Nixon: The language is unparliamentary and uncalled for.

The Chair: I would hope that with three days left and probably about 10 or 15 minutes before we adjourn today, we could start off on a little better footing. Mr Philip was in the process, I believe, of winding up his questioning to Mr Ferraro.

Mr Philip: I would have wound up a few minutes ago if I had not been interrupted by Mr Nixon.

The Chair: I will put on hold the decision on the point of order and allow Mr Philip to wind up then.

Mr Philip: The point that I am asking is, how many people are going to be involved in this whole administrative process? You obviously do not know, so let's carry on.

Mr Ferraro: I can answer this way, if it is helpful: Somewhere between 70 and 100 people now are presently employed in the department of the superintendent of insurance and the Ontario Automobile Insurance Board, and that is inclusive, we believe, and we will substantiate it, of any contracted employees.

Motion agreed to.

The Chair: Shall subsection 4(2), as amended, carry? Carried. Shall subsections 4(3) and 4(4) carry? Carried. Subsection 4(5)?

Mr Philip: No, I have unanswered questions on this. The appointment of employees of the commission: What provision will be made to ensure that there is a balance between those people who will be appointed from the insurance industry and those people who will be what I would call representatives of, perhaps, consumer groups and users?

Mr Ferraro: As opposed to delaying the committee, why do you not answer that, Ms Parrish. Instead of my trying to fool you with my intelligence, let's hear it from the source.

Ms Parrish: I would have to say that I cannot imagine a situation in which any of these people would be representatives of the insurance industry. The reason is that these hearings are not mediations and arbitrations on accident benefits, these are regulatory procedures such as whether this insurance company is insolvent or whether this company committed an improper practice. The persons who would have to hear these hearings would have to meet the basic test of being unbiased and having no axe to grind on behalf of anyone.

This is just a provision that recognizes the fact that the superintendent of insurance personally cannot hear every unfair practice. So he or she would appoint a member of the staff, the deputy superintendent of insurance, who would have the hearing, and if you had such a demand for hearings that you could not meet it internally, it would give you the ability to go out and retain somebody who was seen as completely unbiased to do the hearing, such as a law professor from a university or someone in private practice, or perhaps if it was essentially an accounting issue, an independent accountant or actuary. But I would say under no circumstances would it be likely that you would be appointing someone from the insurance industry.

Mr Philip: People are biased in one way or another based on their background and what their past employment was. Some tribunals actually try to balance that bias by having people from opposite experiences, if you want, but who will have competence in the general subject matter. If you are here to protect or to deal with possible injustices to the consumer, one would assume that on such a commission you would have to have somebody who knows something about insurance and who probably comes from an insurance background. That is fine, but all I am asking is: What are you going to do to ensure that there is a balance, that you have some people who would probably come from a consumer background?

Mr Ferraro: Ideally, I guess the answer to that would be that hopefully the person who got the job would be one who had some familiarity with insurance and/or some comparable area of business, if you will, and who would also obviously be a consumer, without being biased to the degree that he or she has come directly out of that employ. We are looking for the perfect stereotype perhaps, but I think there are a number of capable people who would certainly fill the requirements of being unbiased yet sensible.

Mr Philip: I certainly hope the Minister of Labour (Mr Phillips) does not have your biases when it comes to appointments in that ministry to various tribunals.

The Chair: Shall subsection 4(5) of the act carry? Carried.

Subsection 5(1)? Subsection 5(2)?

Mr Philip: Wait a minute. Take your time. The opposition does have an opportunity to look at things and ask questions. I would like to know what is envisioned by subsection 5(2). Can you give me a few examples?

Mr Ferraro: The most notable example of someone who would be required to provide professional, technical or other assistance to the commission would be, for example, an actuary, accountants perhaps, lawyers even, and indeed they would provide the necessary information in order for a determination to be made.

Mr Philip: These will be people brought in from outside?

Mr Ferraro: Essentially, yes.

Mr Philip: On a contract or on a particular dispute basis?

Mr Ferraro: Under either one, I suspect. You could have them either under retainer in the case, for example, of legal counsel or actuaries, or indeed on a case-by-case basis.

Mr Philip: Is it the view of the parliamentary assistant then that this would be done on a regular basis or just in an extraordinary situation?

Mr Ferraro: As-the-need-be basis. I would not want to preclude the actions of the commission, quite frankly. As-the-need-arises basis, for lack of a better word.

Mr Philip: I do not doubt that there are certain situations when contracting out may be necessary if certain expertise is needed, but here you have a tribunal that supposedly will have some accountants and actuaries; otherwise they would not be in the business in the first place. They have to do what amounts to an audit-type function, one would hope, if they are fulfilling these increased

duties, which you claim the superintendent does not have at the moment or is not clear as having at the moment, but which you intend to provide to him by this bill.

I guess my question is, if all this expertise is needed under section 4 in order to fulfil it, what new expertise are you going to need under subsection 5(2) that you have to go out and contract out to get this outside help?

Mr Ferraro: I am just looking to familiarize myself with section 4 again. Are you asking the question in relation to the hearings?

Mr Philip: What staff do you have to go outside for in order to deal with something like this? You have the adjudicators who supposedly have a certain technical expertise or they could not be in that type of highly specialized adjudication procedure. I assume you do not go out and bring in a bunch of postal workers as adjudicators.

Mr Ferraro: I do not think the adjudicator would necessarily have to be an accountant or an actuary, quite frankly.

Mr Philip: But you have your investigators who will be accountants and actuaries, I would assume, or at least some of them would be.

Mr Ferraro: I am sorry, Mr Philip, I did not hear your last question.

Mr Philip: Surely some of the people who are doing the investigations will have accounting skills or auditing skills; otherwise they would not be put into that post as investigators. My question is, what do you need under subsection 5(2) that a competent tribunal with the powers not only to police and investigate but also to adjudicate and enforce would not already have in its battery of staff and adjudicators?

Mr Ferraro: The commission may require, for example, when it looks at the rate filings, a particular actuarial response to a particular problem that has arisen down the road vis-à-vis the insurance industry in Ontario. One can argue perhaps that they should have on retainer a number of actuaries. I would point out that I think there are only about 12 independent actuaries in Ontario as it is. So we may not be that fortunate.

The reality of the situation is that we want to give the flexibility that is needed for the commission to do the job as anticipated, and that is to protect the interests of the consumers of Ontario. If that means they have to hire an actuary to do a study or hire a specific expertise vis-à-vis accountancy, whether it is a tax expert or whatever, then indeed they should have that flexibility. It may not mean that they have to use

them, but we want to give them the tools if indeed it is required.

Mr Philip: The more I listen to you talk about both section 4 and section 5, the more I have the feeling that you are creating a huge bureaucracy here that is going to be very expensive. An awful lot of people are going to benefit by it, but it is not going to be the consumers. You are going to have all kinds of people who are going to do investigations. You are going to have people out there doing auditing. You are going to have actuaries who will be brought in for special tasks. I guess if I were someone out there who was concerned about how much taxes he or she was paying at the moment, I would really be concerned after listening to your answers on both sections 4 and 5 of this bill.

You are creating an army of bureaucrats that is going to be swarming out there, that is going to be adjudicating, that is going to be enforcing.

Sure, maybe you will get a few rates rolled back once in a while, but if it is going to cost me a fortune as a taxpayer to set up this huge bureaucracy, I really wonder. Why not simply increase the powers the superintendent now has, if it is not clear, and cut down on this very elaborate bureaucratic system which you are setting up under sections 4 and 5?

The Chair: Given that we have dealt with subsection 5(2) already and I said we were going to adjourn at 4:30, I would like to adjourn until tomorrow at 10 o'clock here in room 151.

Mr J. B. Nixon: Tomorrow we begin section 6?

The Chair: Yes. The committee stands adjourned.

The committee adjourned at 1635.

CONTENTS

Monday 12 February 1990

Insurance Statute Law Amendment Act, 1989	G-971
Adjournment	G-1001

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair: Pelissero, Harry E. (Lincoln L)

Vice-Chair: LeBourdais, Linda (Etobicoke West L)

Bryden, Marion (Beaches-Woodbine NDP)

Carrothers, Douglas A. (Oakville South L)

Charlton, Brian A. (Hamilton Mountain NDP)

Furlong, Allan W. (Durham Centre L)

Nixon, J. Bradford (York Mills L)

Runciman, Robert W. (Leeds-Grenville PC)

Sola, John (Mississauga East L)

Velshi, Murad (Don Mills L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Kormos, Peter (Welland-Thorold NDP) for Ms Bryden

McClelland, Carman (Brampton North L) for Mr Furlong

Oddie Munro, Lily (Hamilton Centre L) for Mr Carrothers

Philip, Ed (Etobicoke-Rexdale NDP) for Mr Charlton

Sterling, Norman W. (Carleton PC) for Mr Wiseman

Clerk: Carrozza, Franco

Staff:

Revell, Donald L., Chief Legislative Counsel

Witnesses:

From the Ministry of Financial Institutions:

Ferraro, Rick E., Parliamentary Assistant to the Minister of Financial Institutions (Guelph L)

Nigro, Albert, Solicitor, Legal Services Branch

Parrish, Colleen, Director, Policy and Planning Branch



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Official Report of Debates

Legislative Assembly of Ontario



Standing Committee on General Government

Insurance Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Tuesday 13 February 1990

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

CONTENTS

Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Tuesday 13 February 1990

The committee met at 1005 in room 151.

INSURANCE STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

The Chair: I recognize a quorum.

Mr Philip: Mr Chairman, on a procedural matter before we start, yesterday members of both opposition parties expressed concern that after receiving 227 briefs, the amendments tabled did not deal with the issues contained in those briefs. We wanted an opportunity to question the minister and were told that the minister was busy, and when we asked what he was doing that was so much more important than this legislation, we were told that he had had a breakfast meeting. One can assume that he does not eat breakfast all day. Therefore, I would like to ask of the parliamentary assistant why it is that the minister seems to be hiding from this committee. What is on his schedule today that is more important than coming in here and answering questions based on the excellent briefs that were presented by the public and various concerned organizations? Can you tell us where the minister is?

Mr Ferraro: Today the minister is in Management Board estimates all day. He had a full agenda yesterday with a number of meetings that commenced very early in the morning and ended late at night. I would differ with the member of the opposition when he says that the minister is not taking this issue seriously. Quite the contrary, we have had numerous conversations, he is apprised of the goings-on, if you will, and is up to date on just about everything that transpires.

It is regrettable that Mr Philip seems to think the minister should be here where in the past the parliamentary assistant, whoever that may be, has had in many instances the carriage of a bill in clause-by-clause. I would say to you, he is certainly not hiding from anybody. He is and will be available to answer any and all concerns.

Mr Philip: With respect, in the past when controversial bills were presented, the minister normally made an appearance for at least some time to answer questions and to respond to major

briefs. We have not had the appearance of the minister once. Now when you say he is doing Management Board estimates, does that mean he is preparing his own estimates for Management Board?

Mr Ferraro: He is the Chairman of Management Board.

Mr Philip: Yes, I am quite aware of that.

Mr Ferraro: He obviously has various ministries in. They make presentations vis-à-vis their budgets for the ensuing year and the present year. His responsibilities there are pretty self-evident, quite frankly.

Section 3:

The Chair: Okay. Moving on to clause-by-clause consideration of Bill 68, shall subsection 6(1) carry? Carried. Shall subsection 6(2), dealing with an acting director, carry? Carried. Shall subsection 6(3) carry? Carried. Shall subsection 6(4) carry? Carried. Shall section 6 as a whole carry? Carried. Section 6a.

Mr Kormos: One moment, Mr Chairman. What are we talking about? Are we talking about sections of the bill or the proposed new sections that the amendments will constitute?

The Chair: We are looking at carrying what is in this bill here. I think legal counsel explained that to us yesterday, but we can go over it again for Mr Kormos's sake.

Mr Kormos: No, we do not have to, except I am hearing you read sections and I do not find these sections in Bill 68. It appears to be a reference to what will eventually be the sections in the Insurance Act if and when it is amended.

Mr Revell: Yes, Mr Kormos. Because of the nature of this, the confusion between the section numbers of the bill and the section numbers of the act, I recommended yesterday, and I think the committee agreed, in going through section 3 of the bill to deal with the sections of the act section by section and use that numbering until we get to the end of all of the amendments that are set out in section 3, and then section 3 would be carried as amended.

Mr Kormos: I see. Okay. I have no difficulty following the sections of the bill. Obviously other people did. So we will accommodate those folks.

Mr Philip: I have questions on section 6a. This accident benefits advisory committee that will be appointed by the minister, here we have yet another body kind of floating around this legislation. Are these paid positions, are they to receive a per diem and how are they appointed?

Mr Ferraro: They can receive a per diem. I suspect that indeed they will, but the minister would make appointments. He has received a number of suggestions and obviously will receive many more. We want to make the benefits advisory committee as broad, quite frankly, in its spectrum as we conceivably can. We hope to have representatives from the consumers' association, from physiotherapy—

Mr Kormos: Retired people from the insurance industry.

Mr Ferraro: We may have some retired New Democratic Party people on there as well.

Mr Kormos: I bet you use those.

Mr Ferraro: We do want to have a very broad spectrum so we can get an average response.

Mr Philip: My question was not answered. When you say that they can be paid a per diem, is it the intention to pay a per diem and what is the expected cost of this advisory committee?

Mr Ferraro: The only way I can answer that, is by saying at this juncture I truthfully do not know. If you are asking, I will find out for certain, sure, and get back to you; but it is my view that they will be paid a per diem and that it would be in line with other per diems, I suspect, for similar advisory committees.

Mr Philip: How often is it expected that this advisory committee will meet?

Mr Ferraro: I believe on a regular basis. It pretty well will be determined, probably to a greater degree, the first year because we will be monitoring it very, very closely. We would want as much input from this advisory committee vis-à-vis the first year of operation, but I suspect it will be at the call of the chair, if you will.

Mr Philip: You say "on a regular basis." What does a regular basis mean? Does that mean two days a week, three days a week, once a month, once every six months? What is a regular basis?

Mr Ferraro: Initially, as pointed out by Ms Parrish, they do have a specific job to do and that is to assist in the appointment and selection of mediators for the commission. So they will be meeting certainly every week initially. Subsequent to the commission being established, if you will, with some degree of order and permanency, they will be meeting on a regular basis. Whether

that entails once a month, once a week, once every two months, at this juncture I cannot say.

Mr Philip: This does not spell out the size of the advisory committee. How many people will serve on that advisory committee?

Mr Ferraro: Initially what we are planning on is somewhere in the range of 10 people, but indeed it could be larger if a broader spectrum is required.

Mr Philip: The parliamentary assistant says that it will contain some representation from groups other than just the insurance industry; namely, the head injury groups and consumer groups. I guess my question is, if the minister who is appointing these people has not accepted the advice of all of these groups before this committee, what reason would we have to believe that he will accept the advice of these people when they are on a committee called an advisory committee? Why should they necessarily be interested in participating since they have participated in this process and have not been listened to? Why should they feel that they will be listened to if they participate in another process?

Mr Ferraro: I disagree with your conclusions, which will be no surprise to you. Indeed, we have listened to the advice, and the minister certainly has, of a lot of people; not to the degree perhaps that you would like, and I appreciate that. But it is the intention of the government that the vast majority of the representation on this committee will represent consumers' groups. Indeed, it is my understanding certainly that many groups have not only requested participation, but are actively and anxiously looking forward to participating in this structure, as we are anxious to get their input.

Mr Philip: The minister has gone directly opposite to the advice given to him by various appointees in the past. This bill is evidence of it. He has had his advisers tell him that this threshold system was an improper system, he has had his own commission advise against going the route of this bill. Why would anyone want to sit on a committee advising a minister who obviously has not listened to other people who have been appointed at considerable cost to the taxpayer to advise that same minister?

Mr Ferraro: I guess it is one of the joys of being in government that you cannot please everyone, and that is one of the responsibilities that this government and this minister accept, the reality of having to make tough decisions knowing full well that in many cases—in fact in

most cases—the opposition is not going to be happy or a particular group is not happy. We are mindful of the fact that insurance companies are not happy because we are not going to a pure no-fault system. We are mindful of the fact that lawyers are not happy, quite frankly, because we have a threshold system. But having said all that, we believe we have come up with a balance that is acceptable.

Mr Philip: It is not the opposition which has said that these groups are not being listened to; it is the groups themselves. That is what they have indicated. They made proposals, this government has come in completely ignoring those proposals and now you are saying that somehow you will try to make them happy by giving them this little gift of appointing them to an advisory committee. I say those groups do not buy that. They have said so. They feel that appointing somebody and giving him a salary and calling him an adviser when you do not listen to his advice is a charade. It is an attempt to buy them off. That is what this section is doing.

I will vote against this section because I do not believe the government is being honest with this section. If they were honest in really opening up and listening to these various groups, they would have done it with amendments to this legislation, not simply trying to buy them off with a few honoraria and appointments to a committee after this bill, which they so strongly oppose, has been passed. I would like a recorded vote on this section.

Mr Ferraro: I think really the impression that Mr Philip has given is certainly his impression but not mine. To suggest that these people are not going to be listened to or not have any areas of responsibility, that they are being bought off, quite frankly, the opposition has all too frequently indicated that everyone in this business can be bought off for a couple of bucks. That may be the perception from the New Democratic Party, but it certainly is not my perception.

Mr Kormos: Did we say you were cheap?

Mr Ferraro: I would say without question that these people, for example, will have a very difficult task. There will not be an arbitrator, for example, appointed without the approval of this group. I think it is regrettable, to say the least, that you would insult consumers' groups and average people from every walk of life, and from every political stripe hopefully, and suggest that because they get a few bucks for attending a meeting they are prostituting themselves. I fine it somewhat—

Mr Kormos: Is that a nice way of saying you are a whore?

Mr Ferraro: —reprehensible that that approach and disrespect is indicated by the New Democratic Party.

The Chair: A recorded vote on section 6a. You have a point, Mr Kormos?

Mr Kormos: Oh, you bet your boots I do.

The Chair: And it might be?

Mr Kormos: It is not "might be." Sit down, hold on to your seat and listen. This is what it is. The parliamentary assistant is doing his very—

The Chair: Is this a point of order, because I am prepared to move a recorded vote on section 6a?

Mr Kormos: You may well be, but I am responding, I am participating in this dialogue that was initiated by Mr Philip, to which there was a response by Mr Ferraro and upon which I now wish to comment before there is a recorded vote on this particular section. I trust the chairman is going to find that it is more than appropriate for there to be dialogue in this committee.

The Chair: Taking into mind the comments made yesterday in terms of points of order without a repetitive nature, please proceed.

1020

Mr Kormos: All right. I listened to the parliamentary assistant doing his feeble best to fight back. It is remarkable. Occasionally a smile comes to his lips because he amuses himself with the sophistry that comes forth. He knows darned well what is at issue here, he knows darned well what Mr Philip was talking about and he was quick to point out that maybe there will be a couple of New Democrats appointed as participants in this particular process. So be it, but the fact is that this Liberal government is going to toss around taxpayers' dollars.

One has to hark back to the big pilgrimage to Italy when one thinks about tossing around bucks. That was the one where the Premier (Mr Peterson) and a whole bunch of Liberal backbenchers and would-be parliamentary assistants and has-been parliamentary assistants went along with their retinue. That was the one, as I recall, where Johnny Arena was along too and I remember mentioning at the time that perhaps he was there to whip up hamburgers in case anybody got hungry at midnight in the hotel after room service was over.

The Chair: You are speaking to section 6a, I presume, Mr Kormos.

Mr Kormos: You bet your boots, Mr Chairman, because that is the kind of style and fashion with which this government is capable of tossing around taxpayers' dollars. So if it takes a few honoraria—that is what they are—as Mr Philip pointed out, to attempt to create an air of legitimacy about this, they will do it. The fact remains that this whole process is going to be co-opted so quickly by the insurance industry it will make your eyes water. If the parliamentary assistant does not know it, he certainly should listen carefully and tune in and become familiar with it, just as the Ontario Automobile Insurance Board process was co-opted so thoroughly by the auto insurance industry.

It is something that the Attorney General pointed out in an article quite a few years ago that was published in the Canadian Bar Review, that in the absence of effective intervenor action this co-option is inevitable, particularly in the absence of funding. I am aghast that the parliamentary assistant, Rick Ferraro, member of provincial Parliament for the Liberal Party from Guelph, apologist supreme, apologist extraordinaire for the Ministry of Financial Institutions, should say what he does. He queries, "Do you think we sell out for a few bucks?" Then one has to wonder what he is admitting to. I tossed over to him the concern that maybe he was not cheap, just easy, and really the issue is, would he sell out for a few bucks or is there in fact more to this whole story, is there more to this whole saga that has convinced the Liberal members to so slavishly follow the commands of the insurance industry?

The parliamentary assistant, Rick Ferraro, Liberal member for Guelph, tries to create the impression that the insurance industry is being dragged kicking and screaming into this scheme. Well, bring out the manure shovel, pal. What an incredible proposition. Quite frankly, the insurance industry is happy as pigs in manure about this insurance scheme because it has got control now, not just over the premiums that it charges, but over the benefits that it pays out. They finally achieved the ultimate capitalist ideal. You control not only your revenue, but you control your expenses as well. What could be more perfect for any entrepreneur? If only the Liberals would accord anything akin to that to other business people across Ontario.

For the parliamentary assistant to remain defensive of this is inexcusable. I asked him, and he asked the question, would they, the Liberals, sell out for a few bucks? Does that imply that there is more money than what we have been able

to mention? Indeed, has there been a bigger payoff than what we have able to cite so far? I mean, the parliamentary assistant raises that question as to whether or not the Liberals would sell out for a small amount of money.

It reminds me of the old anecdote that has been told about several British figures, about the dinner party conversation, and it has been attributed to Shaw and I think Churchill at least once. It was the exchange across the dinner table, "Would you prostitute yourself for \$500?" and if the response is, "Certainly not," then is it a matter of knowing what you are but simply a concern over what the actual price is to be?

You tell us, Mr Parliamentary Assistant. You say you will not sell out for a small amount of money. Is it merely a matter of quantum once again? Is it a matter of how much? If it is, have we downplayed, have we low-balled the amount of the payoff? What is it that the insurance industry has on you guys anyway? What are they holding over your head? What threats are in store that are making you bite the canvas like this, that are making you sell out drivers and victims? What do they have on you, Mr Ferraro, or is it the minister? Is that why he is not appearing before the committee, because he does not want to have to confront those types of questions and those type of concerns?

Mr Ferraro: The honourable member mentioned the word "manure" that just jogged my memory. I guess the only way I can respond is by saying that, Mr Kormos, we have been consistently mesmerized by your epithets that are somewhat interlocutory. However amusing they may be, they are based very little on fact.

Mr. Kormos: Is that the best you can do?

Mr Ferraro: I will get better tomorrow.

The committee divided on whether the proposed section 6a of the act should remain as part of the bill, which was agreed to on the following vote:

Ayes

McClelland, Sola, LeBourdais, Oddie Munro, J. B. Nixon, Velshi.

Nays

Kormos, Philip, Runciman.

Ayes 6; nays 3.

The Chair: Moving on to 6b, subsection 6b(1).

Mr Kormos: I mentioned to the clerk before this last vote took place that really what we are

going to be calling for is recorded votes on each and every clause.

The Chair: That is fine.

Mr Kormos: I suspect that the Chair may well inquire of members present whether the same vote as the previous one applies. That might not be an inappropriate procedure.

The Chair: Okay. Subsection 6b(1), same vote?

Mr Philip: I have a series of questions on subsection 6b(1) to sections 6c and 6d. Since they are interrelated on my questions, may I direct my questions to perhaps the first part, because the different subsections, I think, are interrelated.

Mr J. B. Nixon: Go through all your questions and then we will vote together on the items.

Mr Philip: My supplementaries will depend on the answers so I would like to do it one at a time.

Mr J. B. Nixon: I understand what you are saying but for your sake and our sake, if you are going to direct your questions to all sections then it makes sense to vote on all sections. That is all I am saying.

Mr Philip: I do not mind voting on subsections 6b(1) and (2) together, if that is what you are suggesting.

Mr J. B. Nixon: Right. I am just trying to help out.

Mr Philip: I always appreciate Mr Nixon's assistance in these matters.

Mr J. B. Nixon: You are always welcome.

Mr Philip: I only wish he would give the same assistance to the consumers.

Mr Kormos: To the injured victims, the crippled kids.

Mr Philip: My question is this: "The commissioner shall establish and maintain a roster of candidates;" is that a public roster? Can a person like myself or anyone else obtain a list and will that contain the qualifications, or the résumé, or curriculum vitae or whatever you want to call it, of each of the candidates?

Mr Ferraro: The short answer is yes. Whether or not the list will contain the CV on each one, I suggest to you, we could supply this upon request. Indeed, if someone requests not only the list but a CV on each one, I am sure it will be provided.

Mr Philip: How does one go about getting on the list? Suppose I have a constituent and he says,

"Gosh, here is a way of getting an honorarium and I would like to put my name up." How does one go about getting on that list?

Mr Ferraro: The reality is that you are dealing with the appointment of arbitrators, and indeed that is essentially the responsibility of the accident benefits advisory committee. Indeed, they can make application directly to that committee when it is established. On an interim basis, if someone is interested in being considered as an arbitrator, they can certainly forward it either to myself or indeed to Mr Scott, the commissioner.

Mr Kormos: Which size campaign contributions will it be necessary to be guaranteed a position?

The Chair: Order.

Mr Kormos: It is a simple question.

The Chair: Mr Kormos, Mr Philip is recognized.

Mr Kormos: Oh, I am sorry.

Mr Philip: That was not my question so I will ask my question. Maybe Mr Kormos will want to ask his question later. There is a difference in the way in which arbitrators have been appointed under this act and the way in which mediators are appointed under section 6c. I would ask you what is the distinction in the procedure of appointment? Why are they appointed in different ways?

Mr Ferraro: The appointment of mediators, which is essentially the first stage of judicial or quasi-judicial hearing, as Mr Philip knows, are essentially public servants. The hiring of the mediators will follow normal public service hiring procedures and essentially will be determined by the commissioner. The appointment of the arbitrators which is, if you will, the highest quasi Court of Appeal under the alternative dispute resolution system will be essentially the responsibility of the accident benefits advisory committee which, without being totally repetitive—

1030

Mr Philip: You are starting to get into section 6b and I would like to confine myself to—

Mr Ferraro: You wanted a distinction between the two.

Mr Philip: Two variables at one time in this complex bureaucratic system that you set up is enough for any viewer, I think, to keep in mind. We are talking about arbitrators and mediators now, so let's deal with that.

You are saying that the mediators are public servants. The others are the arbitrators who are

appointed on a per diem basis, an honoraria basis, if you want, and will only be paid for times in which there are hearings. Is that correct?

Mr Ferraro: That is right.

Mr Runciman: What is the per diem?

Mr Philip: Mr Runciman asked what is the per diem. I think I had asked earlier what the per diem was of the advisory committee and you could not tell me. Can you tell us the per diem of the arbitrators?

Mr Ferraro: No, I cannot. If I can, let me just say that they would be commensurate with advisory committees' per diems that are similar, if there are similar responsible positions already in existence.

I apologize, Mr Philip, if I was using the comparison between mediators and arbitrators. I felt that you were asking a question on the distinction of the two. The mediators do not make any binding decisions, quite frankly. The arbitrators do make binding decisions and so they must be selected by the advisory committee. As a result, they certainly should, in my view, receive a per diem for their expertise and time.

Mr Philip: Okay. Refresh our memory. What is the going rate now for an arbitrator, since you are saying that it is commensurate with the current rate?

Mr Ferraro: In many instances, it depends on the type of arbitration that is going on, but the range can vary anywhere, as I understand it, from \$500 to \$1,500 a day.

Mr Philip: With extra days built in for studying the case. So it is not just the hearing days that they are being paid for.

Mr Ferraro: No. Whatever is required for the arbitrator to render a decision, that will be the commensurate remuneration.

Mr Philip: But usually there is a formula for everyday hearings, is there not, one half-day of studying or preparation? At least that is true of some quasi-judicial panels.

Mr Ferraro: The Ontario Labour Relations Board does not have that requirement, as I am told, Mr Philip. But you are right, in certain circumstances they do have an extra day or half-day that is allocated for study prior to the rendering of a decision. In this particular case I do not think it is determined as yet, quite frankly.

Mr Philip: I know that some of the federal quasi-judicial bodies certainly do have that kind of formula. I am thinking particularly of the Human Rights Commission. If I am not mis-

taken, it has a formula whereby they get so much per sitting day plus a half-day—

Mr Ferraro: I believe you are right.

Mr Philip: —for every day that they are sitting, on the assumption, quite rightfully so I might say, that they need some time to think about, to review the evidence and to do some research occasionally.

Is it the ministry's belief that the arbitrators will be full-time arbitrators, that this will be a full-time occupation? If not, where do you intend to get these people from? Obviously, if you go to the legal profession, they are busy at their own practices. My assumption is that, notwithstanding that there are a whole large number of retired people out there with a lot of talent, you are not going to pull exclusively from people who are retired.

Mr Ferraro: No.

Mr Philip: One would assume that you will not go to the Unemployment Insurance Commission and find arbitrators who are anxious to find part-time work. So I am asking, where is the pool? Is it going to be a full-time occupation or a part-time occupation. And where do you intend to get these people from?

Mr Ferraro: First of all, we will get these people essentially from the province of Ontario, quite frankly. It would be the same pool that we would get other arbitrators, whether it is a labour relations or human rights case and whether or not it is full-time. I do not believe it will be.

For example, you may have an academic who is experienced in arbitration, or law, or business; professors. You may have, as you rightly indicated, a retired member of the judiciary or a business person or a consumer advocate. It could be a whole wide range of expertise that I think out of the nine million people we will be able to compile, upon the approval and the recommendation of the accident benefits advisory committee, a list of acceptable arbitrators.

Mr Philip: Let me ask you this question. If I am driving a truck for Laidlaw Transport; I am injured; I go to the Workers' Compensation Board and I have an arbitrator who is a full-time arbitrator who specializes and knows the act backwards and forwards. That is his position; that is his job. The same thing in terms of the mediator; the mediator would be, if you think of the various stages of mediation at the board, a full-time staff position, which is what you have put in here. On the other hand, if I am injured and not injured in the course of working, I am driving

my own truck and I have an identical injury, I am going to get a part-time arbitrator.

My question is, why would you not have a few full-time arbitrators, as the Workers' Compensation Board does, rather than going to a bunch of part-time arbitrators? This is a fairly complex act, as the Workers' Compensation Board Act is. Why would you go to a bunch of part-time people who want to moonlight at doing this kind of work?

Mr Ferraro: Let me answer this way. As I understand it, the commission will have two permanent, full-time arbitrators and indeed a roster of part-time, if you will, or on-call arbitrators. But we take the suggestion very seriously, as you so capably indicated yesterday. We are concerned about a growing bureaucracy and indeed, as such, felt that this was a leaner approach to dealing with the situation. We certainly do not want another rent review bureaucracy, if you will.

Mr Philip: Have you costed the cost of having a few full-time arbitrators on a yearly salary, be it \$50,000 a year, or whatever it is that these people are paid at the Workers' Compensation Board, as compared to having a whole army of part-time arbitrators whom you are paying \$500 a day to, which is considerably higher on a daily basis than what you would have with full-time arbitrators on a salary basis?

Mr Ferraro: I think the answer to that question is that there may be a costing. I am not aware of one. But I think the decision, quite frankly, has been made on the basis of having two full-time on staff. And bearing in mind that it is a new way of arbitration dealing with the insurance sector in the province of Ontario; and until we know to what degree of usage the alternative dispute resolution mechanism will be utilized, it is difficult I think, at this juncture, quite frankly, to suggest that we need five, 10 or two, or what the magic number is. It is the intent, obviously, to deal with concerns and the arbitration process in a cost-effective way, and by starting with two full-timers, it was reasonable. It may be that you have to hire more; it may be that two is sufficient, bearing in mind that we have a large, if you will, backup team, or team available of part-time or on-call arbitrators who could satisfy the workload.

Mr Philip: Surely, though, it would be prudent to at least sit down and have worked out in advance when the break-even point, or when the loss point, comes into effect. In other words, do three part-time arbitrators doing X number of hours suddenly cost you more than one full-time

arbitrator doing the same number of hours? Do you not have in your plans, at least, some concept that these part-time arbitrators at \$500 a day may well be very expensive and there should be a cutoff point at which time you say: "We have two full-time arbitrators. It is now costing us too much to have X number of part-time arbitrators. We hire another full-time arbitrator and cut out some of the part-time arbitrators." That to me makes good business sense and I am wondering why you have not done that.

Mr Ferraro: I think you ask a good question, and I totally agree, it does make good business sense. However, to me it would make better business sense—and I guess this is the point I am trying to make—if indeed that determination is made subsequent to the determination of the usage. In other words, start off with two. We do not know how busy or what the demand is going to be for arbitrators.

If I could take the converse of what is suggested—and it certainly is a reasonable suggestion—if indeed we do not have as many cases as we at this juncture, hypothetically, guesstimate we have, because we do not know, quite frankly, and we were going to go out and hire five arbitrators full-time right now, and there was not enough work for them, then it would be equally a bad decision for us to take that approach. From a business acumen perspective, because of the infancy of this process and because of the cost concerned, quite frankly, that until we know to what degree the alternative dispute resolution mechanism is going to be utilized, it would make good, logical business sense to take the approach we are taking.

1040

Mr Runciman: It is ironic to hear a Liberal expressing concerns about growth in bureaucracy when the estimates are about 11,000 new bureaucrats. I am curious about what the parliamentary assistant is saying in the line of Mr Philip's questioning and saying that you do not know what the demand will be. I know that I expressed some concerns early on and I think that you, or perhaps the deputy, mentioned that you are basing your estimates in respect to the case load on the New York state system.

I think that was the comment that came up during the course of the hearings, that the case load in New York state, I believe—I am drawing on my memory—was 10,000 to 15,000, something along that line. I am just wondering if indeed that is what you based your hiring decisions on and the first estimates that you refer to in respect to case load. What is the comparable

establishment in the state of New York in respect to that? Or is there one?

Mr Ferraro: I think you are right when you are saying that the proposed dispute resolution mechanism that is suggested in Bill 68 is very close to the New York system. It has been helpful, certainly, to look at other states vis-à-vis their workload. The determination, however, is that this is a made-in-Ontario system. Obviously, we feel that starting off with two full-time and a roster of on-call arbitrators will, at least initially, deal with the workload.

You are asking me to what degree of usage the New York system was. Maybe Ms Parrish can help you a little bit on that.

Mr Runciman: I am talking about the bureaucratic structure which Mr Philip was asking about.

Mr Ferraro: I understand that.

Mr Runciman: I am wondering how that compares with New York state, since you have made your guesstimate based on the New York state to a significant degree.

Mr Ferraro: To a degree, I think you are right.

Ms Parrish: In determining case load we looked at New York, Quebec and other tribunals in Ontario, such as the Workers' Compensation Board and the Workers' Compensation Appeals Tribunal. I can check these figures for accuracy and give them to you later today, if you would like, sir.

My recollection is that New York has something like 14 full-time mediators, which is somewhat comparable to Ontario. They have a slightly larger population, so they have slightly more cases. They do have, in New York, a mix of full-time arbitrators who are employees of the insurance commission and on-call arbitrators, particularly for regional cases. So, that is the same mix they have. I cannot quite remember what their mix is, so I would have to check that.

They have a group of full-time arbitrators. I am not too sure how many of them there are. I think there are four or seven, something like that. I will have to check that for you. But they use that mix system as well.

They have increased the number of full-time arbitrators over the years. They started with a lower number of full-time and a higher number of part-time and it moved to a somewhat different balance, a larger number of full-time, less part-time.

Mr Philip: What percentage in New York, since you are using that as a comparison, or

Michigan, would be concerned with arbitrating or mediating—my focus has been on the arbitrator, so let me leave it with the arbitration—arbitrating the payment of medical-related bills. Surely the fact that we have a medicare system; that it is the medicare system that is going to pick up the major costs of medical costs from accidents in this province, would surely reduce the number of medical arbitrations that would be done.

Mr Ferraro: I cannot answer that specifically, but I think in partial response I would say that, indeed, because we are substantively increasing supplementary medical and rehabilitative care—\$25,000 to \$1 million—no doubt some of the slack, if you will, would be devoted to dealing with issues of that nature.

Mr Philip: You said that you were comparing it with Quebec. Quebec is a much more comprehensive system than what you are proposing here. Therefore, one would expect that there would be major differences between the Quebec system, because it is so comprehensive, and it is certainly not what you have introduced here, as we clearly found out in Ottawa when we met with the Quebec people. How can you get any kind of comparison? I guess what I wonder is, where did you get the figure of two arbitrators? You say you did not want to hire five.

Mr Ferraro: I think you are exactly right. We said we looked at a number of similar but not exact situations. Because this is a made-in-Ontario plan, it was very difficult to get an exact handle on the specific number of, in this case, arbitrators we would need. I guess the only way I can properly answer the question perhaps is to say again that we are starting off with two. It very well may be that we have to hire more full-time. On the other hand, it may be that two full-time and a large number of on-call arbitrators would suffice.

Mr Philip: I see an ad here for a director of rates and classifications for the auto insurance industry that is being advertised under Peat Marwick. That is for the Ontario Automobile Insurance Board. Will the director appoint arbitrators through a screening process by headhunting companies?

Mr Ferraro: What you are referring to there is an advertisement put out by the insurance commission per se hiring the necessary personnel that is required by Mr Scott, the commissioner, and the commission dealing with the rate filings and so forth. I just reiterate that the arbitrators will be determined by the accident benefits

advisory committee. That group of laypeople make the determination on these quasi-judicial appointments, not the director.

Mr Philip: And how will these positions be advertised?

Mr Ferraro: The arbitrators?

Mr Philip: Yes. They are not public servants, so they obviously will not be advertised through the public service commission.

Mr Ferraro: It would be essentially how the accident benefits advisory committee wants to do it, whether it does a combination of advertising, whether it wants to employ a personnel agency or both, whether it wants to subsequently include an advertisement in the public service, whatever that committee determines is the best approach in acquiring the necessary candidate list for the positions of arbitrators it can utilize.

Mr Philip: I guess my concern is that when I read an ad like this I do not know what the cost is of hiring Peat Marwick to do this, but at least the public out there says, "Aha, if I want a want a shot at being director of rates and classification, there is some independent company out there that is doing some screening and the job is advertised."

Here we have a system, though, under this, which is supposedly the parallel legislation, in which the minister appoints an accident benefits advisory committee to advise the commission, then the commissioner establishes a roster—and the commissioner of course is appointed by the minister—and then this advisory committee that is appointed by the minister in turn ratifies who the director appoints as an arbitrator.

It seems to me that it is a very neat closed door. Here is the minister and he is directing everything all the way down the line, whereas at least in this system there seems to be some openness, that a guy could come in off the street with good qualifications and no connection with the minister in any way and get the position. I wonder why the closed-door kind of route.

Mr Ferraro: Your understanding of the process is, I think, factually incorrect. Let me reiterate, if I may, that the accident benefits advisory committee is not precluded, as in the case of the commission, from advertising for a director. If they want to advertise, indeed they can advertise. In all probability, I am sure they will. So the systems are very similar there. The roster of arbitrators will be determined by this group of laypeople—

Mr Philip: Who are appointed by the minister.

Mr Ferraro: —who will be a cross-section of every conceivable group that can be of assistance in determining who the arbitrators should be, not the insurance commissioner per se. So when the accident benefits advisory group does its advertising and/or circulation for arbitrators and it makes a determination, it will recommend, "This group of individuals will be acceptable as arbitrators," and those arbitrators will then be employed, conceivably in the first instance, in two full-time positions and on an on-call basis.

If I may too, and this may be helpful, I have been apprised of the advisory council's per diems, which I was not aware of until just now. A member of the accident benefits advisory committee will get up to \$150 per day.

1050

Mr Philip: Gosh, that is a big drop in salary. A few minutes ago he was earning \$500 a day.

Mr Ferraro: The vice-chairman of the committee will get up to \$175 per day and the chairperson will get up to \$225 per day. For specific expertise being provided to the council, members will get up to \$200 per day, the vice-chair will get up to \$250 per day and the chair will get \$350 per day.

Mr Philip: I think this is a good example of why it is that the public has a right to have the minister here. We were told earlier that the honoraria would probably be in the vicinity of \$500 a day. Now it is dropped to a maximum of \$250 a day for the chair of an arbitration hearing.

Mr Kormos: That is because he is talking about appointing New Democrats.

Mr Ferraro: No, no, I am sorry. Maybe I misled you. I am talking about the accident benefits advisory committee; it is not the arbitrators.

Mr Philip: Okay, but I was talking about the arbitrators, the part-time arbitrators.

Mr Ferraro: You asked the question about what was the per diem for the members of the committee.

Mr Philip: You said that it was in keeping with the going rate, and the going rate was about \$500 a day.

Mr Ferraro: No.

Mr Philip: Is that not what you said?

Mr Ferraro: I said in regards to arbitrators, Mr Philip, that indeed the range for arbitrators, as I understand it, could vary from \$500 a day to \$1500 a day. You previously asked me how much the per diem was for the accident benefits

advisory committee and I just responded in that regard. The two are not necessarily associated.

Mr Philip: I am trying to get a picture of this bureaucracy that you are building. You have got the advisory committee. They are earning anywhere between \$150 and \$250 a day.

Mr Ferraro: It is \$225, the chairpersons.

Mr Philip: And there are 10 of them.

Mr Ferraro: Initially.

Mr Philip: Okay. Then the minister appoints a committee, and that committee of course then chooses the mediators. Is that the process? The commissioner may appoint employees, but the committee then—maybe you can give me a flow chart. I want to see how someone goes from the minister's office, having written a letter to the minister's office saying, "Look, I want to be on the advisory committee. What am I going to get paid and how am I going to get there?" or, "I want to be an arbitrator. What am I going to be paid and how do I get there?" or, "I want a full-time position as a mediator and how do I get there?"

Mr Kormos: Is that with or without Patti Starr's help?

Mr Philip: How about if we start off with the advisory committee. For the advisory committee I would write to the minister and, if the minister liked my application, I could get appointed. Is that how someone would get—

Mr Ferraro: Prior to this meeting, Mr Philip, you told me you were very busy last night in your office or in your constituency, so I will try to walk you through it again.

Mr Philip: When I say "I," I am using it in the generic sense.

Mr Ferraro: I realize that.

Mr Philip: I in no way intend to apply for any of these positions.

Mr Ferraro: That is fine.

Mr Philip: I am quite happy, even though it means financial loss to me, to run again and represent the people of Etobicoke-Rexdale whenever the Premier has the courage to call an election.

Mr Ferraro: Your happiness permeates every word that you speak. Let me start again.

Mr Philip: I am sure I will be met with same results by the consumers in Etobicoke as the consumers in Quebec met their consumer advocate last night.

Mr Kormos: Right on.

The Chair: Federally speaking.

Mr Philip: Federally speaking.

Mr Ferraro: The insurance commission and the commissioner are responsible for hiring the mediators. The mediators are essentially public servants. The mediators cannot make binding decisions. Essentially we are talking about two positions: mediators and arbitrators. The insurance commission and commissioner will go through the normal public service process to hire these mediators, and anybody who wants to apply—let me finish, Mr Philip, and you can then embellish it or add, no doubt.

Mr Philip: I certainly will, without a doubt.

Mr Ferraro: Anybody who is interested in a mediator's position can certainly apply to the commission directly, or to the ministry and we will forward those applications on. The hiring process will take its normal course of events. The minister will then initially appoint 10—and it can be expanded—a cross section of taxpayers of the province of Ontario with a broad spectrum of expertise, to an accident benefits advisory committee. This committee, again, is composed of consumer advocates, perhaps academics. Certainly the average, if I can use that word, Ontarian will be represented. In fact, the vast majority will be average Ontarians.

Mr Ferraro: The committee will then advertise, no doubt, and acquire a list of, in the first instance, two full-time arbitrators and a list of on-call or part-time arbitrators and make that recommendation to the commission and the commissioner, and those individuals would then act as arbitrators.

Mr Philip: So the minister appoints the committee and the committee, in turn, indirectly appoints the arbitrators.

Mr Ferraro: No, directly.

Mr Philip: They make recommendations and—

Mr Ferraro: Those recommendations are the appointees.

Mr Philip: —they are appointed by the commissioner. So the commissioner develops this list of candidates and the people who are appointed by the minister then appoint the arbitrators.

Mr Ferraro: The people appointed by the minister on the committee compile the list and forward it to the commissioner. The commissioner does not determine the list of arbitrators.

Mr Philip: That is right. The minister's appointees are made from that.

Mr Ferraro: The cross-section of the committee will make that determination.

Mr Kormos: They are political appointees.

Mr Philip: So the political appointees appoint the arbitrators is what you are saying. Now, we know how much these political appointees are going to get. We have been told the high is \$225 a day and then people who are ordinary citizens sitting on that committee appointed by the minister get less than that. Can you tell us what the arbitrator's salary will be? You are going to appoint two arbitrators to this post. What is the arbitrator going to be paid?

Mr Ferraro: I cannot tell you specifically, but it will probably be more than you and I make.

Mr Philip: That might not be difficult in any kind of quasi-judicial body. I think the only people who earn less than us are the justices of the peace, who can send people to jail, and one wonders whether some quality is compromised by whatever they are being paid. I know that the Attorney General is looking into that and we are going to see all kinds of reform and the whole system is going to be improved and it is going to be wonderful. Some of Mr Kormos's clients have been sent to jail by these people. He may feel that things might have been improved if the Attorney General—

Mr Ferraro: Does that mean Mr Kormos has never won a case?

Mr Philip: He has won more than the member for Brampton North (Mr McClelland).

Mr Kormos: When I practised law, I never acted for guilty people.

The Chair: Does this have to do with subsection 6b(1), subsection 6b(2) or section 6c, Mr Philip?

Mr Philip: I am sorry. I should not respond to the interjections by the Liberal members.

The arbitrator is going to be paid more than an MPP.

Mr Ferraro: Conceivably more.

Mr Philip: Considerably more?

Mr Ferraro: Conceivably.

Mr Philip: Conceivably? You mean that you have set up an arbitration system and you have not decided what the remuneration is going to be for that post?

Mr Ferraro: That decision may be made. I am not aware of what the salary is and I will try to ascertain that fact for you.

Mr Philip: You know, the kinds of answers we are getting are just an example of why it is that

the minister should be here to answer questions. You do not seem to know the answers to too many of our questions. Here you have a system that is going to be very expensive, that is very bureaucratic. You say that it is not going to be as bad as the present rent review system, but gosh, I do not see any evidence of that. About the only thing you are not asking for, and it is probably in the regulations, is that everything has to be done in writing first and arbitrated first in writing before there is a hearing.

One has to wonder how much of this is passed on, either indirectly to the taxpayers or directly through premium costs because no doubt the insurance companies will be fighting and have lawyers fighting their clients tooth and nail at this commission. Indeed, as we saw earlier with my questioning, it will probably be necessary for a claimant to have his own representative there, be it a legal or quasi-legal person, who will be charging him so many dollars per hour.

I just wonder, how can you set up a system when you do not even know what you are going to pay to keep people in the system? Surely there has to be some kind of cost-benefit study done before you set up this kind of thing. No wonder you do not know what this bureaucratic system is going to cost. You do not even know how much you are going to pay an arbitrator in the system.

Mr Ferraro: I acknowledge my imperfections. The only thing I can tell you, sir, is that your request to find out how much the two full-time arbitrators' salaries will be—I will endeavour over the noon hour to get that figure for you, sir.

Mr Kormos: How are we going to deal with it? Reraise the issue or are we going to be able to go back to this?

Mr Ferraro: I will bring it in.

1100

Mr Runciman: I will not be lengthy. I want to, in a sense, echo the concerns of Mr Philip about this section of the bill related to the growth of bureaucracy. I think this is the appropriate time to put some brief comments on the record. I expressed these concerns at the outset, in our first meeting, if you recall, when the deputy minister was here. I inquired of him what the implications were with respect to the costs that the taxpayers were going to have to assume and the number of additional bureaucrats the government was going to be required to retain as a result of this legislation. If you recall, the deputy at that time was unable to be specific.

I expressed concern about that lack of knowledge within the ministry in mid- to late December of 1989 when just several weeks before that the government had been committed to passage of the legislation before the end of the year. Here in essence what we had was a government committed to passage of legislation before the end of December 1989 and near the end of December 1989 the deputy had no idea whatsoever what this was going to cost us or the kind of workload. They are very much guesstimates and a lot of crossed fingers and toes in this game with respect to the government. Again, I simply want to emphasize that this is a very scary piece of business that we are talking about in terms of what its impact is going to be on the taxpayers of this province, let alone the implication of the legislation on drivers and so on.

I am just talking about the growth of bureaucracy and the tax cost implications. I do not think it is unfair to draw an analogy between this and rent control, what has happened under rent control, especially with the current government, where we have seen such a significant backlog of cases before rent review and annual costs now exceeding \$40 million per year of tax dollars to try to have some sort of control over the rental accommodation in this province.

The parliamentary assistant was talking yesterday about his support for free enterprise. This is the sort of thing where, when we talk about the way this government has intervened in the private sector in the automobile insurance field in the past two and half years, I do not see how he can sit there with a straight face and suggest he is a free enterpriser. If indeed he is, he is sitting within the wrong party and he should be embarrassed thoroughly to be sitting up there defending this kind of legislation which again continues further growth within government and indeed has some very scary prospects for all of us as taxpayers in this province.

Mr Ferraro: Briefly, Mr Chairman, because I am sure we will have lots of opportunity to voice our concerns in future meetings and/or debates, let me just say without equivocation that I am not embarrassed to sit up here and endorse this bill. I think quite frankly it is a good bill and a fair bill, given the concerns about affordability and the amount of problems with the existing system. Albeit, I acknowledge, it is not perfect, I think it substantively improves the way the insurance business will be run in the province of Ontario and will provide the necessary and affordable insurance required by the 6.2 million drivers in Ontario.

I want to say that the concern about the growth of bureaucracy is a legitimate one and I think that is a concern of a lot of people. There is an equal responsibility, however, to make sure that the system works. Individuals in the opposition have indicated that we do not really have a handle exactly as to how big the bureaucracy is going to be or the exact cost. To be candid, quite factually it is correct to say we do not have an exact figure. In defence of that, I would say that within the parameters of the approved estimates for 1989 and 1990 of the OAIB, which is about \$4.6 million, and the department of the superintendent of insurance in our ministry, which is about \$6.5 million, the aggregate or gross budget at this juncture is about \$11.1 million.

I would further say that there is an approximate number of employees full-time of about 70 individuals on contract, approximately 30 individuals in the superintendent's office. To relate that in comparison to rent review I think is a very large exaggeration. I would say finally that because this is a new way of doing business, it is not exact at this juncture from the standpoint that we do not know how busy they are going to be vis-à-vis the rate filings and/or the alternative dispute resolution mechanism,

Mr Runciman: Exactly, and it is not appropriate for you to use the current budget.

Mr Ferraro: And I would say that it will be a very reasonable number of individuals. We also wanted to give Mr Scott, a very well respected businessman, some degree of flexibility to put his team together in a way that not only makes good responsible sense in expending taxpayers' dollars but indeed will provide the necessary and efficient service that is required.

Mr Runciman: That would be the free enterpriser. You are like the insurance industry, a free enterpriser when it serves your bottom line.

Mr Philip: I have not heard answers that lead me to believe that this will not just be another rent review system. I would remind the public, which may be watching, that it is the New Democrats who voted against the present rent review legislation. The Conservatives voted with the Liberals in favour of it. Our reasoning was that the system being set up was so bureaucratic and so difficult to manage that it would create an injustice and that if a system is going to work at all in a quasi-judicial sense, it has to be as simple as possible so that all sides can understand the process.

The mediators who are appointed as employees, are they appointed directly by the commission or, as public servants, will they be

advertised for and recommended by the public service commission?

Mr Ferraro: I think I partially answered that question before in that it is my understanding that the commission and commissioner will proceed with normal process of advertising similar to the way it is done in the public service. Indeed, that may be an in-house job tender or commensurate with that there may be as well, and I anticipate there will be, advertisements in the various newspapers for positions and, upon acquisition of a number of applications, determination will be made for the best person for the job.

Mr Philip: You have a public service commission with a very large computer system and a very large and sophisticated way of screening a variety of applicants with a variety of talents for a variety of positions. I guess I wonder why it is that you are leaving it so much up in the air like this. Surely the public service commission that is able to screen applicants and recommend applicants to various levels of government should be the front line. If you cannot get a suitable applicant through the public service commission, then it may be necessary to go through other routes. But most people in this province, if they feel that they would like to work in a certain position, as indeed in other provinces, go to the public service commission or to a similar setup in the appropriate province or federal government.

I just wonder why this is left up in the air like this. You do not even have a requirement that there be impartial advertising under this system. At least under the public service system, people have a fairly good idea that they can get an impartial evaluation of their talents and be directed in the appropriate ways. We have a system whereby the advisory committee is appointed by the minister. Then the politically appointed advisory committee advises on who the arbitrators are, and now the commissioner, who will also be appointed politically, then will be the fellow who will decide how the full-time public servants are going to be hired.

I guess one has to wonder about what kind of bureaucratic patronage system is being set up here and whether it is not open to all kinds of abuses. I have some questions on 6d.

Mr Ferraro: Very briefly, I can also say that I am sure most members in the House have had—while the public service commission process is one which is acceptable—and I have also had many people complain that indeed it is a closed shop. So, quite frankly, for every argument made by Mr Philip I think other arguments could be made that indeed by advertis-

ing and by not going to the public service commission per se, if indeed that is the direction they take, it is a much fairer and more equitable process. A lot of people are not familiar with the public service commission, and indeed in the past certainly there have been, at least brought to my attention, a lot of concerns expressed about the lack of clarity in that process.

Mr Philip: You are putting up a paper tiger. There is nothing in here that says they have to advertise.

Mr Ferraro: I would assume that they are going to.

The Chair: Can we deal with section 6b?

Mr Philip: I believe there was a request that there be a recorded vote. Some members had to step outside for a phone call.

The Chair: Yes, I was going to say that there was going to be a recorded vote and that it cannot be the same vote as we had before because we have Mr Sterling with us now. He was not here before we went into the recorded vote. Shall section 6b carry? On a recorded vote, I appreciate that.

Mr Philip: I would like a recorded vote and five minutes to get the people who are going to vote, unless you will accept that they are voting.

The Chair: Okay, a five-minute recess.

Interjection.

Mr Philip: We are saying that we accept that Mr Runciman and Mr Kormos are voting? All right. That is fine with me.

Mr Sterling: I would like to ask the advice of the clerk. Are we allowed to do that? I do not know any rule that allows us to do that.

Clerk of the Committee: If you have unanimous consent.

Mr Sterling: I do not agree with it, so you do not have unanimous consent.

The Chair: Okay, five-minute recess.

The committee recessed at 1120.

1135

The committee divided on whether the proposed section 6b of the act should stand as part of the bill, which was agreed to on the following vote:

Ayes

LeBourdais, McClelland, Nixon, Oddie
Munro, Sola, Velshi.

Nays

Kormos, Philip, Runciman, Sterling.

Ayes 6; nays 4.

The committee divided on whether the proposed section 6c of the act should stand as part of the bill, which was agreed to on the same vote.

Section 6d:

Mr Philip: I have some questions. Here we have another bureaucracy. "The commissioner shall appoint a medical and rehabilitation advisory panel to assist and advise the director and arbitrators under this act." May I ask what the per diem will be for this advisory panel?

Mr Ferraro: You certainly may. This one I have an answer for. The members will get up to \$200 per day, the vice-chair will get up to \$250 per day and the chair will get up to \$350 per day.

Mr Philip: "The panel shall consist of medical practitioners who are qualified to conduct medical assessments and other persons who are qualified to conduct rehabilitation assessments." Do I take it that on this rehabilitation advisory panel it is not your intention to have associations concerned and involved in rehabilitation appoint people to this panel, that it is only going to be medical practitioners whom you invite to sit on that panel?

Mr Ferraro: I do not think the two are necessarily inconsistent there. Certainly, if you are a medical practitioner and/or an expert in the field of rehabilitation, in all probability, in fact in the vast majority if not all the cases, those individuals will be part and parcel of some of the associations you alluded to.

Mr Philip: I think the key words are that first of all you have to be a medical practitioner or, failing that, if not a medical practitioner then you have to be another person who is qualified to conduct rehabilitation assessments. That to me seems to put a restriction of some sort on somebody who is active in conducting rehabilitation assessments.

It is possible to have someone who is quite knowledgeable about rehabilitation and involved in administering or developing policy for an organization that is acting as an advocate on behalf of people who require rehabilitation, such as a brain injury association, which might not be caught in those words "qualified to conduct rehabilitation assessments."

I find it a very restrictive sort of wording and I am wondering, is it designed to restrict and possibly exclude people such as maybe somebody who is the parent of a brain-damaged young person and who rises in the head injury association to become president of that association? I have run into people like that who are

extremely knowledgeable about the philosophy, the various treatment modes and so forth, but they may not technically be allowed, because of licensing and so forth, to conduct rehabilitation assessments.

Mr Ferraro: That is a good question. If I may introduce Imants Abols, who is a solicitor and legal counsel with our ministry. I will ask him to respond to that.

1140

Mr Abols: The reason for breaking out the section as we have, I think you recognize, is so that we do capture people who are not necessarily part of the traditional medical establishment. It is of course from this establishment that you have a lot of the rehabilitation services being provided, but it is conceivable that the people you describe, if they have more of an active role in the rehabilitation community—I do not think that just the parent of a brain-damaged child would necessarily qualify—if they are engaged in rehabilitation services and have developed some kind of expertise, they might be captured. The people who clearly would be captured would be physiotherapists, anaesthesiologists and others who are not, again, recognized as traditional medical practitioners, as doctors and psychiatrists and psychologists. So it is a very broad category.

The Chair: So the assessment as to whether they are qualified or not is subjective rather than quantitative.

Mr Abols: It is a subjective one, yes.

Mr Philip: Let me put it this way. I might be quite well qualified to run, for example, a mental health organization because of administrative skills and so forth. I might be quite qualified, if I have read the literature in the field of mental health, to serve in that post. But I would not be qualified to do an assessment in the mental health field because I do not hold a licence as a psychometrist, a psychiatrist or a psychologist. It seems to me that the word "assessment," to conduct assessments, is quite different from an ability to be familiar with the literature and to advocate and understand what the problems are of a particular group of people.

Mr Abols: I agree with you. I am not that familiar with the scope of rehabilitation services. If invariably you require people with that kind of expertise to have some kind of technical qualification, that is what is contemplated here. Really this is a group of people who will provide independent medical and rehabilitation advice to the arbitrator or the director of arbitration, so

they would be fulfilling the same sort of role that the insured's own doctor or own rehabilitation counsellors would be providing. This person would not be going to the individuals you describe for this kind of assessment. Clearly these would not be the people that the director or the arbitrator would be relying on either.

Mr Philip: Okay, let me take it related more to a field that I am more familiar with. When you get into some of the physiology—I read some of the literature, but I do not in any way profess to be an expert—it seems to me that in the mental health field, for example, patients' rights groups, schizophrenic associations, friends of schizophrenics, various community groups or friends and advocates, that kind of thing, may be in a position to advise a minister on policy and on the kinds of rehabilitation processes that are needed in a particular community or indeed in the province, but they are not in a position to conduct an assessment.

They do not have the expertise to say, "Yes, this person needs this specific program at this specific time." They may say: "Look, we need more programs of this nature. We need less institutionalization. We need more community-based programs. We need this kind of thing." It seems to me that if their role were purely to advise and assess on a particular individual—but it is broader than this.

Mr Ferraro: It is dealing with specific cases.

Mr Philip: It is not dealing exclusively with specific cases. It is also dealing with what amounts to a policy kind of role. It says: "The commissioner shall appoint a medical and rehabilitation advisory panel to assist and advise the director and arbitrator under this act." One would think then that the advice that would come would be not just on the specific individual case, but on the broader situation of what kind of rehabilitation programs should be provided. If that is the case, then it seems to me that by including these assessment criteria you are in fact excluding representatives of those various organizations who may not be qualified to do individual assessments but are qualified to give legitimate advice in the general field of rehabilitation.

Mr Abols: I do not think so, because we then go back to the accident benefits advisory committee and that is a fairly broad committee which draws on all these various areas of expertise. Certainly if these people have something to say about the types of rehabilitation services that should be provided or should be available, then that is the forum where they

would operate. I agree with you that in terms of the kind of assistance they would provide to arbitrators and the director of arbitration on a day-to-day basis, it would be presumably and invariably people with the expertise to do these assessments. The sort of people who would give the policy advice I anticipate would be part of this accident benefits advisory committee: people with a background in rehabilitation who could advise the minister and the ministry on the scope of services that should be available to people.

Mr Philip: So the spot on which the various organizations are advocating on behalf of brain injury people would not plug in here to the system at all?

Mr Abols: If they are giving policy advice of that sort, it would be the accident benefits advisory committee.

Mr Kormos: Why not here too? They could be so helpful in this regard.

Mr Endicott: This is designed for a specific function in the act in the arbitration provisions in terms of referring cases, if I am correct.

Mr Abols: Yes. These are the commission's doctors and rehabilitation experts.

Mr Kormos: Oh, great.

Mr Endicott: Subsection 242d(5), I believe. I assume we will get to it.

The Chair: Shall section 6d carry?

Mr Kormos: No, no, no.

The Chair: Same vote?

Mr Kormos: That is a crappy, crappy little clause.

The Chair: The same vote? Same vote. Carried.

Subsection 6e(1). Same vote. Okay.

Mr Kormos: The whole thing is just a part of a bad piece of legislation.

The Chair: Subsection 6e(2). Same vote. Subsection 6e(3). Same vote. Subsection 6e(4). Same vote. Section 6f.

Mr Kormos: Earlier there was a whole lot of discussion about the commissioner and this almost a triumvirate of powers that was going to pave the way for, as Rick Ferraro, Liberal member for Guelph, parliamentary assistant to Murray Elston, apologist for the auto insurance industry, so inappropriately puts it, a system that is fair and equitable—fair and equitable to the insurance industry but not for drivers and injured victims.

Listen. I am fascinated by the proposition that, "The commissioner, the superintendent, the

director and the employees shall not be interested, directly or indirectly, other than as a policyholder, in any insurer, agent, adjuster or broker doing business in Ontario."

I saw the ad in this morning's *Globe and Mail* for a director of rates and classification, auto insurance industry. I reflect on the role of the superintendent of this province to date. He has been as big an insurance industry hack as anybody in the ministry has been. There have been just countless referrals of people's problems to the superintendent of insurance and the reply is inevitable. It amounts to, "Too bad, so sad. This driver's on his or her own." When the premium flips became apparent, when people were being shuffled from company A to company B and company B was part and parcel of the same company, so that their rates could be jacked up in excess of the so-called cap that was imposed, the superintendent said, "Well, what can I say? I'm only the superintendent of insurance. I can't do a darned thing about it."

When people were being arbitrarily denied renewal, when people were being unfairly bumped by their insurance company, you would write to the superintendent of insurance—mind you, at whose insistence? But I recall it so clearly. How many times did Murray Elston, Minister of Financial Institutions—I am sorry, Mr Ferraro, you are number two apologist for the insurance industry. He is el supremo. He is number one apologist for the insurance industry—say, "Well, bring me your problems. Let me try to fix it." So we say, "Okay, Mr Elston, Minister of Financial Institutions, member of the Liberal cabinet." We send him the problems and then weeks and months later we finally get a reply from the superintendent of insurance saying, "Well, there's not a darned thing I can do about it. That's not the sort of thing that is covered."

Remember Advocate General Insurance Co of Canada? Do you remember that, Mr Ferraro, Liberal member for Guelph, member of the provincial Parliament—Advocate General, the Winnipeg-based insurance company that left perhaps as many as 40,000 people hanging out to dry here in Ontario, ripped them off for thousands of dollars of insurance premiums? Again, we asked your boss, the guy who tells you what to say, Murray Elston: "What are you going to do about this? Surely to goodness this company that is licensed to sell insurance here in Ontario, you've been supervising its financial viability."

We found out, my goodness, that of the well over 100 insurance companies that sell auto

insurance here in Ontario, really relatively small numbers are supervised by the superintendent of insurance, and that is included in this legislation. You threw that in as a little kicker. That is over around section 14. Remember that one, Mr Ferraro, where you said: "We won't necessarily supervise all the auto insurance companies selling insurance here. We'll feel free to rely on other supervisory bodies"?

Mr Ferraro: I do not remember that.

Mr Kormos: It is in section 14. Take a look. Go take a look. You should remember it because it is an embarrassing and feeble and pathetic thing to say to the people who got ripped off by Advocate General and appealed to the government for some sort of help, saying, "This company was licensed by your ministry to sell insurance here in the province of Ontario and you, the Minister of Financial Institutions, did not do a darned thing to protect us from what amounted to basically an insolvent insurance company."

One wonders about how meaningful all this fluff is, because this sounds real good: "The commissioner, the superintendent, the director and the employees of the commission shall not be interested, directly or indirectly, other than as a policyholder, in any insurer, agent, adjuster or broker doing business in Ontario."

That is an awful surprising thing to see. You had no qualms about hiring an actuarial firm, Mercer out of New York City, that had an awful big interest in the auto insurance industry, an awful big interest; one of the biggest auto insurance pedlars in the western world. You hired that company to do your actuarial work for the initial stages of the Ontario Automobile Insurance Board.

You present legislation that, if it was not, might as well have been written in the boardrooms of the auto insurance industry of the province, and you defend it against hundreds of submitters, hundreds of participants, in these proceedings who have told you it is bad legislation and you do not call that an interest in the auto insurance industry.

You come to this committee with an agenda that is fixed, with an agenda that has been defined long before the committee even commenced hearings because you did not want this committee to have hearings. We know that.

The Chair: Shall section 6f—

Mr Kormos: Murray Elston, Minister of Financial Institutions—you got it, Mr Chairman—told the press that he wanted this legislation passed before 21 December 1989 when the

House closed down for Christmas, and he did not have an interest in the auto insurance industry?

How dare you try to create an impression that you are going to forbid an interest in the auto insurance industry when you with the parliamentary assistant betrayed the biggest interest in the auto insurance industry that anybody ever could have. You are promoting legislation that is going to win for them over \$800 million, perhaps closer to \$1 billion, of increased profits in the first year alone, money that you are taking from the pockets of drivers, and most pathetically injured victims—the people crippled by bad drivers. You are taking this money from the people crippled by bad drivers to create profits close to \$1 billion in the first year alone. Are rates going to drop? Does that not betray an interest in the auto insurance industry, that you are promoting rate increases, premium increases, of eight to 50 per cent in the first year alone, which will jack up the \$800-million to \$1-billion figure by Lord knows how much?

What a piece of fluff this is, to suggest that they cannot be interested in any insurer. The whole purpose of this legislation is to promote the interest of the auto insurance industry. How dare you suggest that people should not be interested? You are so interested in the profits of the auto insurance industry that you have betrayed the drivers and victims and taxpayers of Ontario.

You have not listened to them when they have come before this committee to point out significant faults. You have not responded. You have not responded to their pleas, to people virtually begging you to adjust this legislation, to accommodate people with psychological injuries, to accommodate head-injured persons, to accommodate people with broken legs, broken backs, fractured ribs, fractured skulls, who are going to be excluded from any compensation as a result of your threshold.

1150

You are the biggest spokesman and lackey that the auto insurance industry ever had. You are sure putting money in their pockets and you are taking it from drivers, taxpayers and injured victims across Ontario. Do not talk about not being interested in the auto insurance industry. They have never had a stronger promoter than you, the rest of the Liberal Party and the Premier of Ontario right now. Nobody has been more interested in the auto insurance industry, its wellbeing and its profits than you, David Peterson, Murray Elston and the rest of your Liberal caucus.

Mr Ferraro: I would say to my friend the member for Welland-Thorold (Mr Kormos)—and he is my friend and I suggest you need all the friends around this place you can get—that it is very regrettable that my friend has such disdain and a lack of respect for his fellow colleagues in the House that he would venture, as he has on numerous occasions, to categorize and impugn motives of his fellow representatives of the nine million plus people in the province of Ontario. That is unfortunate and that is a decision that my friend has obviously made on his own.

I would say as well that that is one thing, and a regrettable thing in my view, but it is equally regrettable when a characterization or impugning of the reputation of a public servant, such as the superintendent of insurance, is in a public way categorized, and in my view unfairly so. The superintendent of insurance has done an admirable job, quite frankly, in the profession. I think it does not bode well for the other 67,000 public servants who so capably serve this province when motives are impugned and they are not here to defend themselves.

I would just say to my friend that I acknowledge that the power that the superintendent of insurance has had as a result of ineffectual and incomplete legislation is obvious, and we believe we are rectifying that in Bill 68. But I would just say to my friend in conclusion that human nature is a fragile thing and perhaps he should be a little more selective in his abuse of and disdain for his fellow human beings.

Mr Kormos: You tell that to the thousands of drivers across Ontario who get your “Dear John” letters from the superintendent of insurance. Little help do they get from him.

Mr Philip: I was on the list. If you wish to exercise closure, then so be it, but I had some questions on this section.

The Chair: Okay, I am going to allow you to go ahead and I will call the question at, say, two minutes to 12. That is eight minutes.

Mr Philip: You are going to exercise closure; is that your position?

The Chair: That is correct. I think we have had sufficient comment on that.

Mr Philip: I have not had an opportunity to question the parliamentary assistant to the minister on this section. I may have some questions arising out of my initial questions, but it is your position as Chair that you intend to exercise closure.

The Chair: That is correct, at two minutes to 12.

Mr Philip: May I ask you what precedent you have for exercising closure?

The Chair: Based on the amount of time that we have spent on section 6f in terms of the discussion and the comments both by Mr Kormos as well as Mr Ferraro.

Mr Philip: You have not heard my questions yet. You do not know the relevance of my questions. You do not know the relevance of the parliamentary assistant's answer, but you have decided in any case to exercise closure, based on a complete ignorance of what topics I may raise.

The Chair: That is correct. You can challenge the Chair if you like or you can use the next eight minutes to question the parliamentary assistant; the choice is yours.

Mr Philip: I think I will be doing both, but I will start my questions first. I say to you, if you plan on muzzling the right of members in this committee to raise legitimate questions—up until now you have conducted yourself in a manner that I think has been, for the most part, nonpartisan—I say that you are doing a grave disservice and I hope the public that is watching see exactly what is happening. Your intent is ramming through this bill; the public be damned. If you want to be part of that plot and do it from the chair, then so be it, but I hope your constituents are watching as well.

My question to the parliamentary assistant is: In many jurisdictions and indeed even in Ontario after considerable pressure from myself and other opposition members, there are conflict-of-interest rules and guidelines concerning the interaction by a person in a quasi-judicial position and those whom he or she is making decisions about and also the acceptance of positions either before or after he or she has held that position.

Perhaps it slipped my attention and maybe it is somewhere in here, but can you tell me: Have you considered rules and guidelines similar to perhaps the rent review commission that say that a person may not accept a position with an agency or corporation that he has been passing decisions about for a period of time after ceasing his position in the quasi-judicial position such as the Interstate Commerce Commission that is fairly specific about even socializing of people who are in quasi-judicial bodies with those who are directly affected by the decisions they are making?

For example, in the Interstate Commerce Commission, a person who would be on, for example, the transport board would not be allowed to even have lunch with the owner of a

trucking company without having first of all provided to the chairman of that commission his intention and the nature of that lunch and obtained permission to have such a lunch. That is how restrictive they are to ensure there is not only fairness but the appearance of fairness and that nobody is getting privileged by the old boys' club.

We had a major inquiry in 1977, as I recall, into the Ontario Highway Transport Board here in Ontario and in a lot of the problems surrounding that inquiry was who was meeting with whom and when and under what circumstances. Indeed, the chairman ended up resigning. I was proud to have forced that public inquiry and I think that out of it there were a number of changes made in the transport board.

I am asking you: What have you done in terms of potential conflicts by people in these quasi-judicial positions?

Mr Ferraro: The intent of the legislation and certainly of the government is that we have and indeed impose to the best of our ability the highest standard and requirement for employees of the commission. So much so that section 6f says, "The commissioner, the superintendent, the director and the employees of the commission shall not be interested, directly or indirectly, other than as a policyholder, in any insurer, agent, adjuster or broker doing business in Ontario."

So the independence of the commission and the commissioner and the employees therein is a given. Some have argued that perhaps this is too stringent and that indeed it would reflect upon the quality of employees that the commission would be able to employ. We are cognisant of the fact of the severity and the repercussions of a person who is in a position of conflict, and indeed would expect that the absolute highest standard will be a pre-eminent requirement.

With respect to the conflict-of-interest guidelines per se and their application, whether or not those in themselves will be applicable to this individual, I quite frankly cannot say, save and except that it would certainly be the same requirements that all other public servants in Ontario would have to entertain.

In conclusion, other than saying that it is anticipated—and the wording is "shall not be interested, directly or indirectly"—that we will get as unbiased an individual as we possibly can to fill these positions—That is the intent. I do not know whether legal counsel wants to add anything to that.

Mr Abols: Just to say that this sort of thing does not preclude some kind of regime in addition to this which would perhaps govern what these people would do if they left the government after working for the insurance commission, but you will not find anything in the legislation that sets out what happens after you leave the commission. I think that kind of regime would be in place, as Mr Ferraro points out, because we, as civil servants, are bound by conflict-of-interest guidelines and those are part and parcel of our contract of employment. I would anticipate the same thing would apply in the case of these senior officials.

Mr Philip: The commissioner would not be a civil servant under the meaning of the civil service act.

Mr Abols: No.

Mr Philip: Neither would the superintendent, would he? He is an order-in-council appointee.

Mr Abols: But I understand there are also conflict-of-interest guidelines governing these individuals as well.

Mr Philip: The rent review has specific regulations that say that an individual who is acting in a judicial capacity under our present rent review system may not accept a position with DelZotto Enterprises or whatever, or any other company like that, Cadillac Fairview, for at least a year after he has held that position. There is nothing in this act, and I hear from you that there is nothing in the regulations, that prohibit someone from holding such a post. If you can point to some other piece of legislation or regulations that would affect that happening, then I guess I will be satisfied. If not, I guess my question is this: Why is that if I become a rent review officer I may not accept a position with Cadillac Fairview for a year after I have held that post, but if I become a commissioner or superintendent under this act I may go to work for an insurance company the day after I cease being in that position?

Mr Abols: I do not know if you may or may not, because, as I say, that issue is not, I acknowledge, dealt with in the legislation. That is a separate issue, and there may be initiatives in the works with respect to that. I really cannot answer that question.

Mr Philip: There seems to be a lot of questions that we cannot get answers to. Here we have a quasi-judicial position in which a person could, the day after he has served in that position, go immediately into a position offered by the very people he has been making decisions about.

The whole purpose of having these kinds of conflict guidelines in terms of positions is to prevent somebody from being influenced in some way in his capacity in a quasi-judicial capacity by the potential of the offering of a nice position after he or she ceases to be in that position. Whether that in fact happens or not, the fact is that in numerous democratic jurisdictions they have passed these guidelines.

Some would argue that a year is too short. Others would argue that it is overly restrictive on someone, but the fact is that no less a body than the Interstate Commerce Commission has seen fit that, in the interests of running a fair quasi-judicial system, you have to have those kinds of safeguards. I am asking, where are the safeguards in here?

Mr Ferraro: Mr Philip, I think you bring up a good point and it is a subjective decision, to some degree, or argument, if you will, that has been discussed on numerous occasions, as you very well know.

The reality of the situation is that we want as—if I can use the word—pristine an individual as we can get. On the other hand, you have a situation where the individual who, in this case, would work for the commission most certainly would be bound by restrictions of the Public Service Act, which would mean of course that that individual could not use or expound any confidential information, and the recourse is a severe one, as I understand it, in that it could result in court action.

The opposite argument that can be had is that if indeed you want as pristine and capable a person as you can get, you then have the dilemma of saying, "Okay, once that person ceases to be an employee of the commission or the government, the public service, is it right and fair for you to limit any and all career possibilities for that individual?"

It is a delicate balance and a difficult decision. I have heard the same argument stated, that someone who has been in public life as a politician perhaps should not then be eligible for further work for any and all subsequent governments. It is a difficult decision.

The Chair: The question has been put.

Mr Philip: No, it has not—

The Chair: The question has been put, Mr Philip.

Mr Philip: I have further questions.

The Chair: That is fine. The question has been put.

Mr Philip: Mr Chairman, I challenge the Chair. You have no right to exercise closure. My questions have not been answered, and I intend to ask further questions, so I challenge the Chair.

The Chair: That is fine. The clerk advises me that there is no challenge to the Chair's ruling in determination of whether a question has been put or not, so I will put the question: All those in favour of section 6f? Same vote?

Mr Philip: I would require a recorded vote and I ask for the usual time in which I may get my colleagues to come in and vote.

The Chair: We will stand adjourned until two o'clock and have the recorded vote at two o'clock.

The committee recessed at 1205.

AFTERNOON SITTING

The committee resumed at 1405 in room 151.

Mr Runciman: Mr Chairman, I have a couple of items, if you will permit me. I have some material provided to me by Jack Johnson, the member for Wellington, who is the chairman of the Conservative caucus and a respected individual, who had some correspondence sent to him from the Fergus Police Association expressing concerns about Bill 68. At Mr Johnson's request, I simply want to table that with the committee.

The second matter, and I do this on a point of order, Mr Chairman, is that if you will recall, last week I brought to the committee's attention that the government through the Ontario Automobile Insurance Board had required the insurance industry to make filings with respect to increases for the coming year as if Bill 68 had been passed. I made that request because I felt it was critical in term of our deliberations this week, and as we deal with this bill in the Legislature in March and April. The parliamentary assistant at that point last week indicated that information would not be available—he can correct me if I am misquoting him—until the legislation had been passed and had received royal assent.

I expressed a concern at that time, and I am again expressing it, that this information in my view—I am sure it is shared by my colleagues in the New Democratic Party—is critical in terms of our deliberations. In my view we cannot carry on with these hearings in a meaningful way if we do not know what the actual costs are, on the basis of the fact that the government through the Minister of Financial Institutions (Mr Elston) has been making public claims for some months with respect to what the rate increases are going to be under this bill, and now following submission of those filings is starting to muse publicly about rate increases for some drivers in the neighbourhood of 50 per cent.

I think it is incumbent upon the government to provide that information to the committee before we proceed farther with clause-by-clause. That is my view, and I have indicated that at some point in these proceedings, if that information is not going to be provided to the committee, then I personally would not continue to participate in the hearings.

At this time I am asking if the parliamentary assistant has reviewed the position he expressed last week and if there is any change forthcoming.

Mr Ferraro: I can maybe clarify matters a little bit. I thank Mr Runciman for the opportuni-

ty to clarify something I said last week. First, people should know that essentially we were talking about two things. What Mr Runciman was talking about was the summary filings that were in the possession of the insurance commission by the end of December. Summary filings are exactly that, summaries of more extensive filings that were to follow.

When I originally said that it was my understanding that very few filings as opposed to summary filings, filings having as I am sure everyone can appreciate substantively more information, in fact volumes of information pertaining to each insurance company—I originally said that in my view very few had been submitted. It was shown to me subsequently that I was not totally wrong but substantively wrong. The press was actually very kind to me when I went and apologized because I did not want to mislead them. In fact, approximately 50 per cent of the insurance companies had filed their filings.

It certainly was the intention of the government, from the standpoint of legislation that had been passed under the old OAIB, and indeed as Mr Runciman correctly alludes the proposed Bill 68, that filings were still a requirement and I understand that most of them are either in the final stages of being filed or have been filed.

The minister last week requested from Mr Scott, who is the commissioner, that a summary of the filings be developed and released as soon as that summary can be released. I cannot sit here and honestly say to Mr Runciman—in fact I am doubtful, quite frankly, whether or not that summary will be available this week, but it is fully the intention of the government and we have instructed the commissioner to release a summary of the filings.

I would say in conclusion, and I am sure Mr Runciman is cognizant of this fact, that there is some sensitivity because of the competitive nature of the filings, and because of the fact in particular that the smaller companies will have some difficulty with adjusting their filings pending the final approval, if you will—I will make that assumption—of Bill 68 and what exact form Bill 68 will be.

I hope that clarifies the situation a little bit.

Mr Runciman: It does to a degree. I want to have an indication from the parliamentary assistant: It is quite clear and I have indicated, and I am sure it does not upset the members of the government side, that I am not going to

participate in the process, the clause-by-clause until that information is made available. I would like to have, and I am prepared to make a motion but it may not be necessary, the parliamentary assistant to the minister assure us that the summary—we may not be satisfied when we see the summary in terms of the information it provides—that information will be provided to the critics of the opposition parties prior to the House sitting on 19 March.

Mr Ferraro: I can say to the honourable member that assuming the summary is available, the critics will get a copy of it.

The Chair: All this discussion is helping me determine which point of order Mr Runciman is raising this on, so Mr Philip.

Mr Philip: It think it was not a point of order; it was a matter of procedure that Mr Runciman was raising and matters of procedure can be raised at any time in a committee.

The Chair: He raised it on a point of order, to be clear. I am just helping him. I appreciate that advice.

Mr Philip: I am responding to him on a procedural matter—

The Chair: Okay.

Mr Philip: —because I would certainly want you to rule me in order and a procedural matter is in order at the moment.

I would like to have some clarification from the parliamentary assistant to the minister. What is the rationale for providing us, eventually at some point in time, with a summary of the filings rather than let us look at the filings themselves?

Mr Ferraro: There are essentially two reasons, Mr Philip, that I can think of at the moment. The first one is that quite frankly I am somewhat surprised that the minister has agreed—I do not mind saying this—to request a summary of the summary filings. It was my impression, albeit I must be wrong, that these filings would be strictly confidential until such time as the commission and the commissioner have the time to peruse and rule on whether or not insurance companies would have increases and/or would be allowed any increases whatsoever, because essentially these filings will justify to the commissioner and commission whether or not such increases, assuming there are increases, are warranted. So from my standpoint—

Mr Kormos: Is the minister screwing up?

Mr Ferraro: No, the minister in my view is being very co-operative, much more so than I quite frankly would have thought.

Mr Kormos: More than you would have been.

Mr Ferraro: That is why he is minister and I am just parliamentary assistant. Having said that, the other reason is, and I say this with the greatest respect, for each insurance company—there are approximately 140 of them—the rate filings per se would almost require a wheelbarrow for each insurance company and to analyse them, Mr Philip, I think would probably take up most of your time and others in itself. That by no means intends to denigrate anyone's ability. It is just the sheer magnitude of these filings is significant, so I think the fact that there is going to be a summary would be extremely helpful.

Mr Philip: So the rationale is the same as the rationale for not releasing the 39 pieces of research, namely, that this poorly equipped, mere mortal group of individuals who are members of this committee could not possibly understand it without a summary. Therefore, it is necessary to do a summary for us, and for the media and press of course, so that we mere mortals then will not misunderstand with our very limited intelligence the information that is contained in these filings.

I chaired the Re-Mor/Astra Trust inquiry and ordinary members of the Legislature were able to go through two roomfuls of documents and turn out what amounted to a fairly good set of hearings with some fairly interesting information, without the need for some government appointed person to do a summary for us. We were quite capable, with the help of legislative library research and our own research capabilities and our own intelligence, to go through some fairly complicated documents.

Some of us have a background in business and are used to looking at figures that go beyond the number 9 and are able to prepare budgets that are in the 6 and 7 and 8 and 9 and 10 number category. I just wonder why you are once again insisting that we be spoon-fed the government's version with a summary, rather than simply tabling the information and letting us—if you want to supply a summary as well, then that is fine. We would of course want to have the opportunity of going through and seeing whether we agree with the summary. That, surely, is what we did with the 39 documents that were provided and came to some conclusions that might have been a little different than what the government wanted.

Mr Kormos: Indeed, the summary was not particularly helpful in the case of those documents.

Mr Philip: I am saying, why can we not have the documents? We do need to be spoon-fed a summary, the government's selective version of what it wants or what it chooses to let the public know. Let us have the documents.

Mr Kormos: They want to rewrite history. Let them rewrite it.

Mr Philip: Let the Toronto Star have those documents. Then I am sure it would be front-page in the Toronto Star, after the analysis, the way that our committee deliberations have been covered extensively during the last few days by the Toronto Star.

Mr Kormos: They want an expurgated version.

Mr Philip: They do not need a summary. They do not want a censored version of reality. Let's have the documents and let's see what is in them.

Mr Runciman: Further clarification for the PA's response: the summary you are talking about, was that on the filings at the end of December, the sort of preliminary filings so that there could have been substantive changes? Is my own interpretation correct?

Mr Kormos: If I can have a supplementary to both of those before the parliamentary assistant, the member for Guelph, Mr Ferraro, responds, what Mr Philip is saying is that the summary was not particularly helpful when it came to those 39 documents. The summary, quite frankly, was misleading. The summary tried to whitewash and cover up and conceal and detract attention away from the real thrust of the issue, and that was that \$161 per car—there are 5 million, however many of them—\$800 million a year that is being put into the pockets of the insurance industry. That was not in the summary, but it sure as hell was in the documents, was it not? Fantastic. This whole line about a summary is a coverup. That is an effort to smokescreen like we have seen so often throughout the course of these things. That is baloney. People do not buy that.

Mr Ferraro: My understanding is that the request is made dealing with the filings, albeit most of the filings were only recently, in the last week or two, received and Mr Scott and the commission have a responsibility to peruse them, I expect, at least prior to any other government official, if you will. I think that would be a reasonable request. My understanding is the filing summary will be of the filings that we received and have received in the last week or two as opposed to the summary.

Mr Runciman: I echo the concerns of my colleague as well. I think that perhaps we do not have the time personally or the expertise to peruse the filings and I understand there is some sensitivity. But I think that through government assistance and research in the legislative library and other caucus sources, we could all be in a position to assess these without, I would think, revealing industry secrets. Certainly it would give us a better handle on whether indeed the summary provided by the government was accurate and in no way shape or form misled us or the public.

1420

Mr Ferraro: I appreciate the reasonableness of Mr Runciman's approach, quite frankly, because there is a significant amount of sensitivity. Everyone knows that. These filings are specially attuned to each insurance company, and there are 140 of them, the way they do and underwrite business in the province of Ontario. There is a high degree of sensitivity, bearing in mind the competitive nature of the free enterprise system. It is that sensitivity and the fact that the insurance commissioner, who only recently was appointed, a couple weeks ago, has a responsibility according to his mandate to look at it and at the same time provide a significant amount of information for the perusal of this committee and others.

Mr Philip: I am not going to get into an argument about how competitive they are and how uncompetitive they are. I can appreciate that there may be certain reasons why corporations may not want their individual filings known by their clients before a final decision has been made.

One way in which we could get around that would be to simply number the filings and provide the filings to us without the name of the corporation. It would not give us an idea of what the average person would be paying, because obviously some companies may underwrite thousands more policies than other companies, but it would at least give us the range that these companies are asking for and give us some idea of the general thrust. If there are some that are asking for zero and others that are asking for 65 per cent, it may not be all that meaningful unless we know whether the company that is asking for zero—

Interjection: Is a big player.

Mr Philip: —is a small player and the company asking for 65 is the biggest player, but at least it

would give us some idea initially of what it is the companies are asking for.

Another way of perhaps handling it would be to take the larger players and at least give us a list of the larger players; again, not necessarily by name but at least, "Here are the ones that are writing 75 per cent of the business in the province and here are the rates they are asking for." If we at least had those figures we would have some idea where we are going and we would not need the name of the corporation.

I think it is more than a reasonable compromise that I am proposing. I have not asked Mr Kormos if he agrees with that but it is one idea that I am brainstorming as a way of trying to be reasonable to you, to the ministry and to the corporations. I am trying to get some information on the table so we know what we are doing.

The Chair: Before I recognise Mr Kormos, maybe we could get the parliamentary assistant's undertaking that he would go back and check with the minister either of the two options Mr Philip has outlined. At a minimum, from what I hear him saying, once Mr Scott has prepared a summary of the filings, they would be made public as soon as possible, and to try to comply with before the House resumes. Maybe he could respond to that issue tomorrow morning in terms of either—I hear a couple of options that you are proposing. One is to simply number all the filings and then we would be given the stack or whatever, or secondly, as you say, the major players, again on a nonidentity basis. Perhaps we could ask the parliamentary assistant to try to obtain an answer for us tomorrow, given that scenario.

Mr Ferraro: I would be happy to go back to the minister and indicate the concerns as expressed by the committee, but I would just reiterate, if I can, that it was fully the intention of the minister, as everyone knows, to release a summary of the filings for the committee. I expect that this commitment, at the very least, will be met.

The Chair: Okay. Does that satisfy your concern, Mr Kormos?

Mr Kormos: I am wondering, though, if we might not take 15 minutes now and call the minister.

The Chair: When we move on to other business, I am sure we could try to get that response as soon as possible.

Mr Kormos: But number two, these rate filings are based on—the regulation read to file

them as if Bill 68 were passed, and I trust that meant as if Bill 68 were passed threshold intact.

The Chair: Yes.

Mr Philip: —with amendments.

Mr Kormos: It says none of the amendments that have been proposed substantially alter anything that would affects rates. These amendments that the government is proposing now are irrelevant to the rate filings.

Mr Ferraro: Except, in fairness, that the clause-by-clause hearings are not included. There may be some further amendments, I do not know.

Mr Kormos: During the clause-by-clause?

Mr Ferraro: Yes.

Mr Kormos: Well, there are only two more days allotted for it.

Mr Ferraro: A lot of things have happened in one day.

Mr Kormos: I know. Will you tell us now, and perhaps the insurance companies, are there any amendments being prepared by the government now?

Mr Ferraro: There may be.

Mr Kormos: Wait a minute, Mr Parliamentary Assistant, Rick Ferraro, member for Guelph, Liberal—

Mr Ferraro: The great riding of Guelph.

Mr Kormos: What do you mean there may be? I mean, do you know of any?

Mr Ferraro: No, not specifically.

Mr Kormos: Wait a minute. Do you know of any vaguely?

Mr Ferraro: I would suggest that if Mr Kormos wanted that specific answer, maybe he should switch parties and fight like hell to get into cabinet and maybe he can get an answer to that question.

Mr Kormos: Are you kidding? Switch parties? And risk being defeated in the next election? Are you kidding? I like my riding and I like my constituents. Switch parties? I have never taken a bribe in my life. I would not know Patti Starr if I tripped over her.

Mr Ferraro: Probably never been offered one.

Mr Kormos: Unlike my Liberal counterparts in the room, I would not know Patti Starr if I fell over her, honestly.

Mr Ferraro: Neither would I.

The Chair: If we can get an answer the minister this afternoon, I am sure the parliamen-

tary assistant will attempt to do that. If not, at a minimum, some time tomorrow. Moving back to a recorded vote on the proposed section 6f of the act, as set out in section 3 of the bill.

Mr Philip: I had a question on this.

The Chair: The question had been called and we said we would deal with it when we returned. Mr Ferraro.

Mr Ferraro: I am sorry for tugging at you, but Mr Runciman asked the question this morning and we have a partial answer. I am wondering whether it would be appropriate to give that answer or not.

The Chair: Can I deal with 6f and then we will come to your partial answer?

Mr Ferraro: Okay.

The Chair: Thank you.

Mr Philip: May I ask just one question on this?

The Chair: You have called for a delay on the vote. I said the vote would take place when we returned at two o'clock.

Mr Philip: I asked a question this morning and the parliamentary assistant gave me incorrect information. I think I have the right to—

The Chair: At any point in time after we deal with 6f, he can correct it if he would like. We will have a recorded vote.

The committee divided on section 6f of the act, which was agreed to on the following vote:

Ayes

LeBourdais, McClelland, Nixon, Oddie Munro, Velshi, Sola.

Nays

Kormos, Philip, Runciman.

Ayes 6; nays 3.

Mr Ferraro: Two issues: One was a request of Mr Sterling yesterday. He wanted to know whether or not we were going to respond to Mr Nader's written request of the ministry. In fact, I have a copy of Hansard, and Mr Nader said, "I have a number of questions that I think the committee would do well to ask the powers that be, which I can submit for the record later." The clerk has advised us that they have not been submitted for a specific request as yet, and as such, I do not think the minister has an onus to respond.

The second thing, if I may clarify, is in regards to Mr Runciman's and others' concern about if indeed we took our alternate dispute resolution mechanism essentially from New York state.

What are the comparable figures? Just to set the table a little bit, there were 20,000 bodily injury claims in the state of New York last year, I believe. I remind you that the earliest statistic we have here in Ontario is 121,000; that was for the year 1987. So if you assume a 10 per cent increase, which I think is fairly reasonable, you are looking at about—what is that?—140,000 bodily injury claims, approximately.

In any event, if you use New York by comparison, there were 10,000 request for mediation; 40 per cent of them were settled at conciliation. It requires a staffing of 13 full-time staff, two senior examiners and one associate examiner. That is inclusive, so there are 13 full-time staff.

There were 6,000 arbitration cases as opposed to mediation; 60 per cent of them were settled and they required seven full-time arbitrators and eight half-time arbitrators. That is, I think, in response to one of the questions.

Mr Runciman: Is it appropriate, Mr Chairman, to ask a question or two about this?

The Chair: Sure.

1430

Mr Runciman: I am just wondering if Ms Parrish perhaps, looking at those statistics from the state of New York, can give us an overview in terms of how she sees the Ontario proposal fitting in and if indeed it is compatible with the New York experience, and how you arrived at your conclusions in respect to Bill 68 in light of the New York experience.

Ms Parrish: We had the benefit of quite an extensive discussion of this whole issue at the OAIB hearings, and they had a whole chapter on ADR. We also looked at comparable experience in Quebec and looked at the Workers' Compensation Board. The experience of New York has been that because it has a very strong regulatory system—that is, it has a lot of power to deal with unfair practice and underwriting and so on—and because it has a very good consumer information system, it has tended to be able to bring down the number of disputes over the years by having quite a tight regulatory environment; for example, by publishing the number of substantiated disputes against insurance companies every year. Insurance companies have been quite anxious to avoid being on the list and therefore have tailored their behaviour accordingly.

Interestingly, what has happened from our assessment in New York is that the number of disputes has actually decreased over the year. When we look at Ontario, we assume that

Ontario will probably have a slightly worse record than New York in the initial years because it would take some time to shake the system down to get to the sort of level that it is in New York.

The other difference about New York compared to Ontario is the point that you have made, which is that they tend to have more disputes with health care service deliverers than we expect will be the case in Ontario.

Looking at the Workers' Compensation Appeals Tribunal, its case load shows that a substantial number of disputes are over entitlement, whether you are entitled to the benefit at all, and that is because it has a lot of cases involving industrial disease, which is not a factor for accident benefits in general. So when we looked at all of those factors, we decided that it was probably not unrealistic to expect that even though Ontario will have a lower overall number of bodily injury claims, the number of disputes it will probably have in the first few years will be very similar to the number in New York; that is, about 10,000 a year.

Mr Runciman: That is taking into consideration the differences in the legislation.

Ms Parrish: Yes.

Mr Runciman: You have factored that in in some way.

Ms Parrish: Yes. We have sort of noted that, on the one hand, New York has certain kinds of disputes that Ontario probably will not have. On the other hand, Ontario will probably have certain kinds of disputes that New York does not have. We have also looked at workers' compensation in Ontario, which is not exactly the same but gives you some information about the number of cases on entitlement.

Then we have also looked at the Quebec experience. For example, in Quebec annually they have about 6,200 cases that go to what they call first review, which is sort of their equivalent of mediation. Then they have about 1,200 to 1,400 a year that go on to appeal to their Commission des affaires sociales, which is sort of like our Social Assistance Review Board.

So when you look at that and you look at New York and you look at the relative populations, it gives you some feeling of confidence that that is what the benchmarks are likely to be, although no one knows for absolutely certain.

Mr Runciman: Yes.

Ms Parrish: But there is certainly a consistent pattern in all these jurisdictions that have

attempted to look at this. That is the best we can say, crystal ball gazing.

Mr Runciman: Thanks very much.

The Chair: I have the clerk on the phone. I think he is checking in terms of—again, I will read Hansard.

Mr Kormos: It could be the minister wanting to talk to Mr Ferraro.

The Chair: Possibly.

I have Mr Nader's comments from Hansard, and I will read them verbatim. "I have a number of questions that I think the committee would do well to ask the powers that be, which I can submit for the record later." We are attempting to establish whether in fact they were submitted later.

Mr Kormos: Have they not yet? I just gave them a copy of them.

The Chair: Okay, so that is an answer then. Can we move on to section 6g?

Mr Philip: On a point of order, Mr Chairman: I think Mr Ferraro and I accidentally and inadvertently misled the committee earlier today. Let me, first of all, admit my error. It is a technical error. I indicated that under the rent review regulations there were conflict-of-interest regulations that prohibited a person from appearing before that tribunal for a year after he no longer was a member of the tribunal.

I now stand corrected. I recall that we in the New Democratic Party had requested that and that the way of getting around it or dealing with it was, rather than drafting a regulation, that rent review pass the policy, and they built it into their employment contracts with their commissioners. The effect is identical, but it is done under their contract of employment provisions rather than by regulation. The intent is the same, but it is done by just a different vehicle.

Mr Ferraro, on the other hand, did indicate that conflict of interest, and particularly the type of conflict I was talking about, would be covered under public service conflict of interest, and of course it is not because these are not public servants. Indeed, if you look at the Manual of Administration, they are not covered there either.

My question again is, is it not appropriate via some mechanism, and I would prefer it by regulation, to prohibit someone who serves in one of these quasi-judicial functions from being employed for at least a period of one year after he or she has held this post? Because obviously they are in a position to be of some influence and indeed may be in a position to be influenced.

The Chair: Okay. I will look to clarification from someone. Mr Abols.

Mr Ferraro: Could I comment first? I was partially in error, but only in this sense, Mr Chairman, on this occasion, that mediators and the full-time arbitrators are public servants and indeed fall under the conflict-of-interest guidelines. The only ones that do not would be the per diem arbitrators, who would not be categorized as public servants.

The Chair: What about the commission or the superintendent or director?

Mr Ferraro: They would fall under the same guidelines as the public servant.

The Chair: Okay.

Mr Abols: I was just going to confirm that these are Lieutenant Governor appointments, the director of arbitration, the commission and the superintendent. Again, these would be matters of administration that would be dealt with, I presume, at the time that these people are appointed and hired.

Mr Philip: It has not been before, so why would we expect that they would suddenly do it now?

Mr Abols: I cannot sort of speak on that issue.

Mr Philip: But you are hypothesizing that they will do it, when in fact we found that we have had to raise bloody hell in the Legislature before such tribunals as rent review decided to do it via contract. Why would we suddenly assume that if this is silent on it—and when they have an opportunity to simply do it in the simplest way possible by regulation, why not do it now?

Mr Abols: It is a policy issue, and perhaps Ms Parrish could speak to that matter.

Ms Parrish: It is difficult for me to speak as to what the policy of appointments of the ministry should be. I think at this stage all we can do is take back the concerns that you have expressed.

The Chair: Maybe we will deal with it when we get to regulations.

Ms Parrish: It is always a concern of apparent conflict of interest, and certainly people should not use information which they have obtained in relation to their employment to their own advantage. On the other hand, there is always the difficulty of attracting good people if they feel their employment possibilities in the future are unduly restricted. I can take back your point.

Mr Ferraro: The concern certainly will be conveyed to ministry officials.

Mr Philip: Okay. I have a question on section 6g—and 6g, of course, allows me to ask a

question on practically anything, because you have an annual report in there where we will deal with the broad policy areas of this operation. Since there are two arbitrators appointed, the assumption is, of course, that there are going to be hearings. If there are mediators, then the assumption is that the mediators, as in the case of the Ombudsman's investigators, will be investigating complaints in various municipalities and parts of the province.

1440

My question is this: Is it the intention under this act to have a series of local offices in different municipalities? What is the cost of that? Where is this whole operation you are setting up going to be housed? Have you done any estimate of how many offices you are going to need?

How are you going to handle the hearings? Where are they going to be held? What is the process whereby someone in northern Ontario who has a complaint with an insurance company may have a hearing in his or her community and not have to travel to Toronto to have his day in court, so to speak?

Mr Ferraro: The quick answer to a lot of the questions is no, no, no.

Mr Philip: No, no, no to what?

Mr Ferraro: To be more explicit, it is not the intention to have regional offices. The intent is to have regional hearings, which would necessitate on occasion, from time to time, arbitrators to go to a specific region perhaps and get a room for the day and essentially have the hearing there. It is not intended to create a series of regional offices that would deal with these hearings.

Mr Philip: So if a person has a complaint in Sault Ste Marie, where does he meet with a mediator?

Mr Ferraro: It is conceivable that the mediator, assuming there would be a number of complaints, would have a regional meeting right in Sault Ste Marie, all things being considered, or at the very worst, the issue would be dealt with, if indeed the circumstances of the issue allowed it, in Toronto, I suspect.

Mr Philip: So he would have to travel to Toronto then to present his case.

Mr Ferraro: Not necessarily. If he specifically requests that it not be held in Toronto, I am sure the commission would try to accommodate that individual when indeed it held regional hearings in that area.

Mr Philip: What happens then if you have this kind of conflict: The insurance company's headquarters, as are most insurance companies—

Mr Ferraro: Many of them.

Mr Philip: —are in Toronto and the fellow making the complaint lives in Sault Ste Marie. Whom do you accommodate, the lawyers for the insurance company in Toronto who want the hearing in Toronto or the client of the insurance company who is disputing the remuneration he is being paid or whatever it is that is happening to him in Sault Ste Marie?

Mr Ferraro: Let me briefly say, first of all, that not all head offices of insurance companies, as Mr Philip knows, are located in Toronto.

Mr Philip: We know there are a lot in London, Ontario.

Mr Ferraro: Having said that, perhaps Ms Parrish could clarify the procedure to a greater degree than I have to date.

Ms Parrish: I think the current thinking is that if an individual asks for a hearing in his own community, that will be accommodated wherever possible. It may be that if you come from a very small community, a very small population, realistically it is just not possible to have it in that community, in which case the travelling expenses of the individuals involved would be paid to go to the nearest community. So if you live in a very small town like Upsala, you might come into Thunder Bay for your hearing. The current intention is to provide regional hearings and also to provide hearings in the French language where the individual involved makes that request.

Mr Philip: What we envision then are a whole bunch of these fellows flying all over the province to have hearings in all these municipalities instead of having regional offices that will investigate on the ground. First of all, the mediator flies in. The mediator does not get anywhere, cannot get any mediation; then the arbitrator comes in; then there is a hearing in Sault Ste Marie, and then he flies back to Toronto.

Mr Ferraro: No. First of all, the mediator would do most of his work over the phone and render a decision, which of course is not binding. The other reality is that indeed, if there are regional hearings, the arbitrator would fly in, drive, take the train or walk, but that is a reality of having to deal with a large province and having to deal with regional meetings. The alternative to that approach is something that you and I both do not want and that is a large, bureaucratic structure that would necessitate regional offices in different parts of the province.

Mr Philip: One way that would really have stopped all of this, of course, would have been that if you had had a crown corporation, anybody who had a complaint against that crown corporation could have gone to the regional office of the existing Ombudsman to file the complaint the same way as complaints against the Workers' Compensation Board are filed, at least until your legislation passes that prohibits him from dealing with that or any other arm of government.

What you have done is set up a huge bureaucracy. You are going to have a whole bunch of people flying all over the place to investigate and to hear. The experience of the Ombudsman is that you cannot investigate a lot of complaints without having somebody on the ground. You are often dealing with people who are not necessarily literate, at least not in the English or French languages, and therefore cannot present their claims in writing. They would not qualify in most instances for any kind of legal aid assistance with a local legal aid office, even if there were one in their community. A lot of communities do not have any. You are setting up quite a bureaucracy here. The airlines, I am sure, are going to be very pleased about all of this, but one really wonders about the cost of this kind of operation.

Mr Ferraro: I think you and I would disagree. There is not going to be a large bureaucracy. To have, say, five arbitrators, assuming there are five, fly from time to time to have a regional hearing, to me that is not untoward. The system of Ombudsman's regional offices or to compare it to the WCB process, in my view, is not palatable when one considers the length of time required to get an answer out of either one.

The reality of the situation is that we expect the decisions dealing with income replacement to take no longer than 30 days and up to 60 days for an answer, quite frankly, from the arbitration process. So we expect it to be neat, mean and lean and efficient, unlike the other two that some people have criticized for not being lean and mean.

Mr Philip: It seems to me Mr Sorbara said that about the Workers' Compensation Board. I have waited. We finally got the results of a tribunal hearing that was held a year and a half ago. It took a year and a half after that hearing for that tribunal to come down with a decision. Here we go again.

Section 6g of the act agreed to on the same vote.

Mr Philip: I have a question. Subsection 6h(1) states, "The Lieutenant Governor in

Council may assess all insurers with respect to all expenses incurred and expenditures made by the commission in the conduct of its affairs and an insurer shall pay the amount assessed against it." Do you want to spell out for me what is happening there? What is your intention there? How is the assessment derived at?

Mr Ferraro: I will let Ms Parrish, for the sake of clarity, indicate that.

Ms Parrish: The way these assessments against the insurance industry usually work—and I would note that the federal government already assesses these costs and so do all other jurisdictions, to my knowledge, in Canada—is that at the end of the year they take the cost of the commission, or the agency in the case of the federal government, they deduct the amount of fee income that is generated in order to ensure that there is some degree of user-pay, and then they assess each insurer, usually on the basis of the premium income that it generates, so that companies that write \$1 billion worth of insurance in Ontario pay more than companies that write only \$200 million.

The assessment is against the entire insurance industry, life insurers as well as property and casualty insurers. It is often fairly common within these assessments to look at some sort of disproportionate charge to companies that, for example, are excessive users of the alternative dispute resolution system. It is common in New York, for example, that companies that have a disproportionately bad record for the use of certain services get charged more. That is an effort to recognize companies that are conducting their business in a way that does not create a demand for regulatory intervention.

1450

Mr Philip: So the cost of operating this large, bureaucratic tribunal will be calculated and if it costs X millions of dollars to operate next year you will say the insurance companies have to pay for it, which is another way of saying it is going to be built into their premiums. Now I am being told—and there is nothing in here that says it—that if an insurance company is a particular user, it is going to pay more than others. In other words, one would assume that if it is a user, it is having a lot of people who are complaining that they cannot get a reasonable settlement and therefore are going to an arbitration system. Where is all of this spelled out in here? It says that you can assess all insurers. I do not see the guilt or abuse fee built into this clause.

Ms Parrish: It would be prescribed by regulation. That is provided in subsection 2. I

would just want to clarify that I cannot speak as to how the regulation will be drafted. I am only pointing out that in jurisdictions that have similar provisions this is what they do. In the federal government, where they charge back the industry, they do it on a straight premium basis. They just say, "How much business do you have?" and they divide it on the basis of how much business you do. Other jurisdictions such as New York attempt to make some distinction based on whether or not you are a company that has a bad regulatory record or a good regulatory record. Those are options that are available within the regulation.

Mr Philip: So the assumption is made that there is a disincentive if you build in the user-pay system. The ones who have the most cases before the tribunal are the ones that obviously, in the opinion of the government, are the ones who are abusing the system, who are holding out, if you want, on paying claims properly, and therefore are the ones who should pay the most. Yet I see nothing in here that says that will happen. My question to you is, if you do not build that into the regulation, if you do not give us any assurance that that is built into the regulation, what is preventing an insurance company from dragging the puck and wearing down the client by paying as little as possible and by forcing the client into this arbitration system, which in turn would be passed on to all of the companies, not just the one that is dragging the puck.

Mr Ferraro: I am not sure this is going to satisfy you, Mr Philip, but indeed the assurance is given that this will be in the regulations and indeed is in regulations now.

Mr Philip: That is not what I heard.

Mr Ferraro: That is what I heard.

Mr Philip: I heard that it was one of the considerations.

Mr Ferraro: No, it is in the regulations, and indeed if it is determined by the commission that an insurance company is abusing the system, then it will pay and pay dearly. Indeed the penalty, if not the criminal charge, quite frankly, will not be borne by the consumer in those instances. Indeed, with the rate filings, the insurance commissioner will have the right to exclude that significant penalty, \$100,000 to \$200,000 in those cases, and the insurer will have to bear the brunt of it.

Mr Philip: That is not what I heard, so maybe you can clarify it. Did you say that it will be built into the regulations or that you are considering that it be built into the regulations?

Ms Parrish: On the question of whether or not persons who use the ADR system more than others should be charged for it—

Mr Philip: Corporations.

Ms Parrish: —I am not in a position to make a commitment as to what will be in the regulations; I have only said that in other jurisdictions where they do a differential charge that is how they do it, but on the other hand there are other mechanisms in relation to ADR which are intended to be penalties for abuse. For example the arbitrator can charge 50 per cent of the overdue fee, two per cent compounded monthly, and the arbitrator, if he finds that the insurer is unreasonable, must charge this. In addition, the insurer bears the cost of the arbitration itself, so there are a lot of disincentives to sort of abusing the system. I am just saying that in addition to all this, in New York they look at this sort of fee issue.

I have to say in all honesty I am not in a position to say what will be in this regulation but only to say that the manner of prescribing the charge will be by regulation, and federally—

Mr Ferraro: But the regulations that will penalize insurance companies are already there. That was the point I was trying to make.

Mr Philip: I have had experience of companies dragging the puck right up until the time at which it would go to court and then agreeing to settle. Is there a mechanism built in to penalize a company that forces a lot of expense in terms of mediation but eventually gives in before the hearing?

Mr Ferraro: I think your analogy of dragging the puck is appropriate to these hearings at this point in time. To answer your question, yes. We will have Ms Parrish expound on it to a greater degree if you so desire.

Ms Parrish: On page 37 of the bill, in subsection 242d(10), it says, "If the arbitrator finds that an insurer has unreasonably withheld or delayed payments, the arbitrator, in addition to awarding the benefits and interest to which the insured person is entitled under the no-fault benefits schedule, shall award a lump sum of up to 50 per cent of the amount to which the person was entitled at the time of the award together with interest on all amounts then owing to the insured (including unpaid interest) at the rate of two per cent per month, compounded monthly, from the time the benefits first became payable under the schedule."

Subsection 11 goes on to say that the arbitrator may also award to the insured person expenses in

relation to the arbitration proceedings, as are set out by regulation.

Section 6h of the act agreed to on the same vote.

Section 6i of the act agreed to on the same vote.

The Chair: There is an amendment to section 6j.

Mr J. B. Nixon moves that section 6j of the Insurance Act, as set out in section 3 of the bill, be amended by adding the following subsection:

"(2a) In awarding costs, the commissioner is not limited to the considerations that govern the award of costs in any court."

Mr J. B. Nixon: The rationale as given, and I think all members have it available to them, is that in making decisions with respect to the costs of appearing and arguing a case the commissioner need not be bound by who is the winner and loser. Occasionally on these matters there are interveners who raise valid public interest points and may not necessarily be classified as winners or losers but none the less contribute to the airing of issues and the discussion and ultimately the thoroughness and validity of the decision, and they should be entitled to some consideration in terms of payment of their costs of appearing.

Mr Kormos: What mechanism is there for—

The Chair: You will have to get closer to save the words for posterity.

Mr Kormos: I am not sure if posterity will last that long, but what mechanism is there for enforcing an award of costs?

Mr Ferraro: I will ask legal counsel to respond to that.

Mr Abols: The current mechanism under the Insurance Act, and I believe it has been preserved in Bill 68, is that any order of the commissioner or the superintendent can be enforced as an order of the Supreme Court, so you would file it with the Supreme Court and basically carry on the way you would if you were a plaintiff in an action and got a judgement in your favour and take judgement debtor proceedings and so on.

Mr Kormos: An insurance company has got all sorts of assets and money from which to pay for proceedings. What about plain folk who would enter into these without any certainty as to whether or not they would be awarded costs in the event they were successful? What this does is it eliminates the certainty of that party because it says that the awarding of costs is not limited to the traditional considerations.

1500

Mr Abols: I am sorry, I did not quite understand the question.

The Chair: I think Mr—

Mr Kormos: You see, the chairman did.

The Chair: —Kormos is concerned about individuals going into a process not knowing whether they were to have legal representation, whether (a) their costs would be covered or (b), if they lose, whether they would be subject to the other person's costs and how this amendment either restricts that or broadens that.

Mr Abols: It certainly broadens it because it simply says you do not approach this the way you would in a traditional judicial forum. In the traditional judicial forum, the court is constrained by principles and law that has developed on the issues of cost. So the winner-loser scenario is what often prevails there. This is a very open-ended one designed, quite frankly, to give the benefit of the doubt to the parties that are involved in the process and the principles of equity are going to be the significant determining factor: What is fair? Is it a legitimate claim? Did the person really have a real interest at stake here and was not just abusing the system?

Mr Kormos: It is precisely that discretion, because the word "may" implies discretion, that causes some concern. I appreciate that it is a double-edged sword but what is brought to mind is the Ontario Municipal Board award of costs against a fine Toronto alderperson which has discouraged alderpersons across Ontario ever since then from initiating appeals of zoning decisions to the OMB. I am concerned about that and I am concerned about the highly discretionary power of the commissioner plus the exemption that he or she gets from, let's say, traditional standards by virtue of the amendment.

What other control is there? I appreciate it is a double-edged sword but it is Janus-faced.

Mr Abols: The controls, quite frankly, are the controls that apply to any statutory tribunal or person exercising quasi-judicial powers. You can have their order reviewed by a superior court, by Divisional Court.

Also, I think you have to bear in mind, as you will see later on in the bill, that commission practice and commission policy in certain areas will be influenced by the minister. The minister can issue policy directions on certain issues. I do not know if this is going to be an issue that would call for that kind of response but, as far as checking an abuse, that there is an abuse by the commissioner of his powers under this section,

there are the traditional avenues still open to that individual, the courts.

Mr Kormos: We are opposed to the amendment.

The Chair: On the amendment, same vote? Okay.

Motion agreed to.

Section 6j of the act, as amended, agreed to on the same vote.

Sections 6k to 6m of the act, inclusive, agreed to on the same vote.

Mr Philip: I have some questions on section 6n.

As I read section 6n, I understand that if a person does not like a decision or has grounds to feel that the decision was not correct, having appealed to the superintendent and to the commissioner, he is still not satisfied, then the only recourse is to the courts for judicial review. Is that correct?

Mr Ferraro: Yes, that is correct.

Mr Philip: I find this really abhorrent because in all jurisdictions that I know of, with the exception of Prince Edward Island, which does not have an Ombudsman system, there is an appeal of quasi-judicial bodies to the office of the Ombudsman. Indeed, I had lunch with a former Ombudsman from one of the provinces today. He has written some interesting papers on this. Indeed, his government, which could be called a somewhat conservative government, at one time did not want to give him the powers to review quasi-judicial bodies and then it was pointed out that some of the worst abuses have been by quasi-judicial bodies and tribunals.

If you look at complaints before the Ombudsman in all jurisdictions, and with the start of the office of the Ombudsman in Sweden many years ago, it was because some of these quasi-judicial bodies can at times become arbitrary or can at times set up processes which deny justice by delaying justice, can become bureaucratic, can have systemic problems within them. That is why all jurisdictions have an appeal to the Ombudsman in cases where there are abuses of the quasi-judicial system.

The purpose of it is that if you are going to set up a tribunal system, the whole purpose of a tribunal system—and I am trying to catch Mr Ferraro's attention—

Mr Ferraro: I am listening.

Mr Philip: —is supposedly to save on a person's having to take legal action and go to court. If you are going to have a tribunal system

and then say, "Well, if you're being improperly done by in this quasi-judicial system which replaces the judicial system, your only recourse is to go to court," you are defeating your purpose.

I wonder why it is that under this system—and it would only be used on very rare occasions probably—you do not have an appeal to the Ombudsman rather than exclusively the choice of going to court.

Mr Ferraro: In response, as I understand it, and Ms Parrish can correct me if I am wrong, essentially this section—and I am a little confused by Mr Philip's concern in this regard. But nevertheless, these are decisions, essentially by the superintendent and the commissioner, about insurance companies; for example, if the insurance company is insolvent or if there is something of a nature specific to an insurance company.

I guess the other thing would be, perhaps in defence of some of the concerns Mr Philip has vis-à-vis insurance companies, that the choice of whether to go to an arbitrator or to court still exists. Indeed, the insurance company can decide that it wants to go to court instead of to an arbitrator. But this particular section is dealing with such broad areas as whether an insurance company is solvent.

Mr Philip: If a claimant is not paid and does not get what he considers his just remuneration from an insurance company, he would not be covered under this section is what you are saying.

Mr Ferraro: He would have a choice of whether to go to an arbitrator or to take it to the courts directly.

Mr Philip: Right. In the case where an arbitrator does not rule favourably or, in his opinion, makes an error, then in this system his only recourse is to go to the courts.

Mr Ferraro: No, he does not have redress to the courts. Substantively, his only recourse would be to go to the director of arbitrations and lodge the complaint there. And there would be a judicial review if required.

Mr Philip: And if he is not satisfied with that, then his only recourse is to go to court to have a judicial review?

Mr Ferraro: Yes.

Mr Philip: The point that I am making is that in every other area that I can think of decisions by a quasi-judicial body can be reviewed not just by the court or judicial review but also by the Ombudsman, and the Ombudsman is the safeguard not just for the individual case. More particularly, what I find is most relevant is that

the role of the Ombudsman is to find out when the system is breaking down. We saw a very good example of that when Dan Hill did a review of the Workers' Compensation Board and said, "Look, I'm not dealing with an individual case but I'm dealing with a whole system that is breaking down and here are some of the problems in your system." That was a good example of where the Ombudsman could review a quasi-judicial body and say, "The system that you've set up, your mediation system, your arbitration system, is inappropriate and here are some of the things that you have to do in order to correct this problem." You want to deny the public that right or that safeguard. Is that correct?

1510

Mr Ferraro: Let me see if legal counsel can satisfy your concerns, Mr Philip.

Mr Abols: This section, first of all, is fairly standard to most administrative tribunals, workers' comp or any other system presently in place. It does not preclude somebody going from the Ombudsman—as I understand the Ombudsman's mandate, he can, as a general watchdog, review the procedures of any body. The point, though, is that with the Ombudsman system the individual does not gain any individual relief other than the public or moral satisfaction that the Ombudsman can bring to bear on the public official and then finally the censure, perhaps, of the Legislature when it makes its report to the House.

I am not aware, but I will look into this and confirm that there are any special remedies that the Ombudsman can bring to bear in the service of the individual complainant. It will respond and probably conduct these kind of systemic reviews of the situation.

Mr Philip: I am sorry, but you are very badly informed, as Mrs LeBourdais, who has been a member of the standing committee on the Ombudsman, will confirm.

Mr Abols: I will speak to—

Mr Philip: The Ombudsman can say: "In this particular case, the merits of the case, I think that you've made a mistake. You should review it. I believe that Mr A or Mr B should have been awarded X number of dollars in this case." He can recommend to the Ombudsman's committee that it review it. Indeed, over and over again over the years the Ombudsman's committee has told the Workers' Compensation Board that, in its view, it should go back and review a case and reconsider it, reconsider it with regard to certain

particular things which were not considered, factors, guidelines.

In addition, the Ombudsman has the right to look at any tribunal and say, "Look, it's breaking down here. It shouldn't take the Ontario Labour Relations Board two years to decide whether or not a union should be certified or not," as happened in the case of the Teamsters trying to get certification at the airport. "You can't have a system that sits on files this long. You've got a problem here."

The Ombudsman can act as both a mediator and a last, quasi-judicial overseer, if you want, and say: "Based on this case, the procedure was wrong. We're not telling you that the decision was wrong but the procedure was wrong, and because the procedure is flawed, we ask you to review that procedure and rehear or redo this." That is a safeguard that I think is being built in in parliamentary democracies of various kinds that have adopted the Ombudsman model, because we know that some of these quasi-judicial bodies can often become bogged down in their procedures as well as in their processes and that sometimes the process has to be highlighted.

Mr Abols: I am not questioning the effectiveness of the Ombudsman; I am simply suggesting that this section does not in any way prevent or cut off that avenue of recourse. On the contrary, if there is any restriction on the scope of the review, it really is directed to judicial officials and tells them, "Look, unless there has been a breach of basic principles of natural justice, this forum is the final forum for deciding those issues." It may be that because of systemic problems in the system a person may have a case with the Ombudsman. Again, given that this is a very standard provision in many administrative statutes, I would be surprised to find that this has been a stumbling block for the Ombudsman in reviewing other regulatory bodies, because as you rightly pointed out, the Ombudsman does do that and this section does not prevent the Ombudsman from doing so, but on a very different basis, though.

The Chair: You mentioned that you were going to check something out and get back to us.

Mr Abols: Yes, I am having someone look into the provisions under the Ombudsman Act.

Mr J. B. Nixon: Mr Chairman, I move that the question be put.

The Chair: A recorded vote on section 6n.

Section 6n of the act agreed to on the same vote.

Section 6o of the act agreed to on the same vote.

The Chair: Shall section 3, as amended, carry? Same vote, I am assuming.

Section 3, as amended, agreed to.

Section 4:

The Chair: Section 4, in checking with our legal counsel, simply is amended by inserting before section 7 within the act the following heading: "Administration." Shall section 4 carry? Carried; same vote.

Section 4 agreed to.

Section 5:

The Chair: Section 5 of the bill, section 7a of the act, refers to records.

Mr Philip: Who has access to these records?

Mr Ferraro: It is governed essentially, as are other ministries, by the Freedom of Information and Protection of Privacy Act. So indeed the general public for that matter, as you know, Mr Philip, could apply for certain freedom-of-information requests.

Mr Philip: Is it available to someone for litigation purposes, the information stored here? Who has access to this?

Mr Ferraro: It would depend on the information. Maybe I will get legal counsel or Ms Parrish to expand a little bit on it.

Mr Abols: I would simply reiterate what Mr Ferraro has said. It is the Freedom of Information and Protection of Privacy Act that governs here. You would have to ensure that we are not talking about personal information, or if we are, whether it comes under one of the exemptions. The general thrust, as I understand that legislation, is to promote public access to documents that do not present a danger to personal privacy. So you would have to look to that legislation to determine who and in what circumstances, everybody but in what circumstances these people would have access to those documents.

Section 5 agreed to on the same vote.

Section 6:

The Chair: At the top of page 9, section 6 of the bill, subsections 8(2) and 8(3) of the act.

Mr Philip: I wonder if we could go through each of these, since you have a different set of things being done in each, and give us an explanation. I do not mean a long explanation, but tell us what each of these is going to do. What are each of these certificates?

Ms Parrish: I ask my colleague to jump in. I will try to be quick. It is sort of not in my nature.

The first one is probably just a certificate that would be issued in a court that says this company is or is not licensed. It is probably used mostly in litigation or in hearings. In some cases we have had requests for these things involving fraud cases, where people have alleged to be something they are not. Essentially the provision that something is a true copy simply allows documents in the possession of the commission to be certified for purposes of litigation, without having to have someone come and swear the document, without having to have someone come and say, "I'm the person who keeps all these documents," and so on. It is primarily used in litigation, although also in regulatory proceedings.

The amount payable to the Treasurer of Ontario under subsection 14(3) or (4), I have to check that one.

Mr Philip: That is the penalty section.

Mr Abols: That is preparation of abstracts or books and vouchers when the superintendent does an audit of insurers. Subsection 14(4), I will just read it, says, "Where the office of the insurer at which an examination is made under this section is outside Ontario, the insurer shall pay the Treasurer of Ontario for the cost of the examination upon receiving a certificate of the commission stating the amount payable." Again, it is all costs associated with auditing insurance companies.

1520

Ms Parrish: Subsection 80(4), I think, is where you have a special audit of an insurance company and the special costs of the audit are charged against the insurance company. I do not have a copy of the Insurance Act with me. Perhaps you could check that. My recollection is that in a case where there has been a special audit and—

Mr J. B. Nixon: Subsection 80(4) is amended by section 30 of the bill. You may want to refer there, on page 17.

Ms Parrish: Thank you, Mr Nixon. Yes, this is a special audit where the commissioner is intervening on a regulatory basis because he is not satisfied that the audit is satisfactory, and under those circumstances the cost of that special audit is charged back to the company.

Mr Philip: So that would be where the commissioner was not satisfied that a company's own audit was truthful or valid for whatever reason?

Ms Parrish: Yes, sir. Clause 6(2)(b) is simply a certificate of service to avoid, again, having to give testimony as to service.

I think clause 6(2)(f), stating whether a document is filed—the same thing, to avoid having to give personal testimony.

Clause 6(2)(g) is the same thing. It is to avoid having to actually call the director of arbitrations or the superintendent to say, "Yes, I have this document." It is just to avoid the sort of unnecessary use of personnel in court proceedings.

Giving particulars of the custody of any book, record, document or thing, it is essentially my understanding—I am not a litigation lawyer—that it is tangential to information about other documents; that is, "Yes, we have this document and yes, we keep it in our central filing system," or, "Yes, we keep it in our public record," or, "Yes, we keep it in our"—whatever, our registry of licensed companies, for instance.

Mr Abols: You might also note the possibility if there is ever any question about how accurate these records are and you can establish that yes, they are always in the custody of so-and-so and therefore you can take it that they are accurate.

Ms Parrish: Clause 6(2)(i) is a provision that is needed because of the offence provisions which say that proceedings for an offence under the statute must take place within two years of the knowledge of the offence coming to the attention of the commissioner or the superintendent, so they have to be able to attest that this knowledge came to their attention as an organization in a certain way so that they can prove that they are within the limitation period.

Mr Philip: So there is a limitation period of what—two years?

Ms Parrish: Two years.

Mr Philip: So you need proof that the complaint or the facts on which the complaint was based were filed with the superintendent or the commission within two years of the alleged offence.

Mr Abols: Yes, look at page 50 of the bill, section 414 of the act. You cannot commence the proceeding for an offence under the act if it is more than two years after the date on which the facts supporting the proceeding first came to the knowledge of the superintendent or the commissioner.

Ms Parrish: You might have a situation in which they would attest as follows: "Something happened in 1985. In 1986, while doing a routine inspection of this insurance company, it came to our attention that they were committing this bad practice." So the thing that happened was in 1985, but the period of prosecution limitation

runs from 1986 when it came to the attention of the regulator that this thing was happening. There has to be some way of indicating how they found out and they would have to give evidence.

Mr Philip: Would that not normally come out in testimony? Why do you need this—

Ms Parrish: To avoid having the commissioner or the superintendent attend personally.

The Chair: Does this apply only to insurers, this particular section, in terms of—

Ms Parrish: No.

The Chair: Where I thought Mr Philip was going in terms of the two-year time frame was someone who was injured in an accident launching an action within the two-year time frame. This has nothing to do with this section?

Ms Parrish: No, these are only offences. These are people who have contravened the Insurance Act, which could include persons as well as insurance companies.

Mr Abols: Mr Chairman, I am not sure what the parliamentary procedure would be here, but while you are on page 50, there is a provision that deals with the enforcement of orders and this was a question that Mr Kormos raised. Perhaps I could just give you the specific reference here.

The Chair: Sure.

Mr Abols: We indeed have preserved that provision whereby the superintendent on his own initiative can actually file the order with the High Court and enforce it. It is contemplated, I submit on the basis of this drafting, that the person can go the superintendent or the commissioner and say: "Look, you awarded an order of costs in my favour. The insurer has not paid. I cannot go to court," or, "I do not have the money to file it." The superintendent on his own motion then could file it, because it is an order of the superintendent or the commissioner and the insurer has failed to comply with that order.

Mr Philip: So he would use clause (i) then as his filing mechanism, or would be, if you want, the statement of facts—

Mr Abols: He could certify the order.

Mr Philip: —or would be the equivalent of the statement of facts.

Mr Abols: Yes.

Mr Philip: That this order was given on such and such a day and based on this information.

Mr Abols: That is right and he could certify the order itself and that would be filed with the High Court.

Section 6 agreed to on the same vote.

Section 7 agreed to on the same vote.

Section 8:

The Chair: Section 9 of the act, on page 10, refers to the right to a licence.

Mr Philip: What are the provisions for appealing the removal of the licence?

Mr Ferraro: I will ask legal counsel to respond to that.

Mr Abols: The initial hearing will be conducted before the superintendent and that would be an order of the superintendent. Of course that could then be appealed to the commissioner, and then from the commissioner, again you would have judicial review.

Mr Philip: There has been a problem within the ministry of a lack of records or a lack of sharing of information between various quasi-judicial bodies concerning the lifting of licences. A particular case I can think of was where under the Mortgage Brokers Act the lifting of the mortgage brokers' licensing was not conveyed to the Ontario Securities Commission and the securities commission then allowed someone to operate who, had it known, was a character who was not worthy to receive a mortgage broker's licence and for a variety of reasons would not have allowed this person to operate under the Securities Act.

I am wondering, are there provisions now that will co-ordinate within the various tribunals? These people often operate in a variety of modes. We are talking about some big-time operators. We are not talking about penny ante thieves here. We are talking about, in the particular case I can think of, millions of dollars being ripped off. I guess my question is, are we improving any system of communicating information under this act with those responsible for the Mortgage Brokers Act, the securities commission, and the various other financial institutions, quasi-judicial bodies that have to make sure that when you are dealing with the public and when you are taking the public's money, you are of reputable character and are operating in an honest and aboveboard manner?

Mr Ferraro: I am not exactly sure of the specific intent of the question, but if I grasp the significance of it—Are we sharing information more readily?—I think the short answer is yes, and maybe Mr Abols could expound on it.

Mr Abols: There is legislative support to that in the Ministry of Financial Institutions Act which has yet to be passed and I believe is before the House for second reading, so that act does

deal with your question. It ensures that there is this kind of information sharing between the different service branches within the ministry.

1530

Mr Philip: It seems to me that there should be some kind of central registry. If a person loses his insurance broker's licence, for example, or authority, whatever you call it, then you had better make sure that the same disreputable character is not simply converting his business to selling mortgages or maybe even selling real estate, because if he is a crook in one field the chances are he will be a crook in the other. Since the character of a person is one of the considerations in granting any of these licences, then one should have a central registry. Otherwise, they simply move around. If you cannot make a scam in insurance, you make it in mortgages, and if that does not work, then you get into the securities field.

Mr Abols: The two ministries you would be looking at for that kind of considered effort would be the Ministry of Financial Institutions and the Ministry of Consumer and Commercial Relations, and there are specific provisions in our legislation and complementary provisions that I believe will come into force in the Ministry of Consumer and Commercial Relations enacting an act, I suppose you would call it, that will promote this kind of information sharing, because, for example, real estate brokers are governed, I believe, by the Ministry of Consumer and Commercial Relations. So we recognize the need for that kind of active sharing of information and steps have been taken to provide the legislative tools to do that.

Section 8 agreed to on the same vote.

Section 9 agreed to.

Section 10:

The Chair: This is section 11 of the act, on page 10. Any questions?

Mr Philip: What does "promptly, explicitly and completely" mean? I am not a lawyer, but I know there have been arguments as to what that means.

Mr Abols: I am sorry. I did not hear the question.

Mr Philip: Under section 11, "The superintendent or a person designated by the commissioner may direct to an insurer any inquiry related to the contracts, financial affairs or the acts and practices of the insurer, and the insurer shall answer promptly, explicitly and completely." That sounds nice, but what does it mean? I mean,

is there a guideline for "promptly, explicitly and completely?"

Mr Abols: "Promptly" means right away. "Explicitly" means get to the point—

Interjection: It is the exact opposite of the committee process.

Mr Abols: I will not comment on that.

Mr Philip: It certainly is the exact opposite of trying to get any answers out of the parliamentary assistant or the minister.

Mr Abols: As I say, "explicitly" means get to the point, and "completely," give us the answer to the question that we are asking.

Mr Philip: Is that clause in other quasi-judicial bodies, because the Ombudsman, for example, in Ontario has had some terribly difficult times in getting information out of certain branches of certain ministries?

Mr Abols: I do not know. I could check if—

Mr Philip: What action is there under this act then, if there are delays by the insurer?

Mr Abols: Right down in the next section, the superintendent can walk in and look at those, look at records, look at your business practices and conduct an audit, not necessarily of its financial affairs but of its business practices.

The Chair: Shall section 11 carry?

Mr J. B. Nixon: Yes, promptly, explicitly and completely, it shall carry.

Section 11 of the act agreed to on the same vote.

Sections 12 to 14 of the act, inclusive, agreed to on the same vote.

The Chair: Section 15, at the top of page 12.

Mr Philip: Wait a second. I believe Mr Kormos had a question on section 15 and, unfortunately, he is not here.

The Chair: Okay. We could probably pick it up a little later.

Mr Philip: Can we just agree that we can open it up later if he has a question, rather than delaying it?

Sections 15 and 15a of the act agreed to on the same vote.

Section 10 agreed to.

Section 11:

Mr Philip: Is there an annual report? I think it was under another section that there would be an annual report of the commission tabled with the Legislature.

The Chair: Yes, that was page 5, subsection 6g(1).

Mr Philip: Does section 18 of the act then give him the right to issue special reports? Is that the intent?

Mr Ferraro: Yes, if it is in the public interest.

Mr Philip: He files an annual report and, in addition to that, this allows him to file a special report if he thinks there is something of particular interest that has to be brought to the attention of the Legislature. Is that the purpose of this?

The Chair: I will ask someone to respond to that.

Mr Ferraro: I will ask Ms Parrish to expand on what the purpose is all about in this section.

Ms Parrish: The purpose of this provision is to follow up on the approach we discussed about jurisdictions like New York where the commissioner publishes information such as, what is the record of companies at arbitration and mediation and what are the companies that have the best and worst record of substantiated disputes or unsubstantiated disputes? It also allows for things like the the publication of rate comparisons and other consumer information, information about the alternative dispute resolution system or about the direct compensation system or about rules and so on. It essentially allows the publication of information about the business of insurance.

Mr Philip: So rather than wait for his annual report, he can publish as he sees fit.

Ms Parrish: Yes.

Section 11 agreed to on the same vote.

Section 12:

Mr Philip: What is the penalty for an offence under subsection 2?

Mr Abols: On conviction of an offence under this act, if it is an individual, on first conviction a fine of not more than \$100,000, and on subsequent conviction a fine of not more than \$200,000. The offence provisions are set out on page 48 and 49, section 412.

Mr Philip: I suppose the offending party, in addition to this regulatory penalty, would also be open to convictions of fraud or other possible criminal charges, would he?

Mr Abols: That is a potential, yes, and that of course would be within the purview of the crown attorney and the criminal justice system.

Mr Philip: So this is up and above any kind of offence such as fraud. It is purely regulatory.

Mr Abols: That is correct. These are regulatory offences.

Section 12 agreed to.

Sections 13 to 27, inclusive, agreed to.

Mr Philip: Wait a second, Mr Chairman. These Liberals members who have been so joyous in yelling "carried" do not read quite that fast and I would appreciate if you would slow down and allow us to see what each section is.

Mr J. B. Nixon: On a point of order, Mr Chairman: Do not slow down our behalf. We are quite capable of reading the bill.

Mr Philip: You are certainly not capable of commenting intelligently on it, so one would expect that you cannot read it.

Mr J. B. Nixon: On a point of order, Mr Chairman: Any time Mr Philip wants an intelligent commentary he can just ask me.

Mr Philip: Mr Chairman, with respect to Mr Nixon, taking the time of the committee to ask for him to make intelligent comment would be a complete waste of my time and the time of the committee, so I would not want to be accused of slowing down the processing of this bill by asking for something which is not likely to be of any use.

1540

The Chair: Okay. We were, I believe, as far as section 27. I think the ones all the way from section 15 to section 28 delete the word "minister" and insert the word "commissioner," or in some cases "superintendent."

Sections 28 and 29 agreed to.

Section 30:

Mr Chairman: Mr Nixon moves that subsection 80(3) of the Insurance Act, as set out in subsection 30(2) of the bill, be amended by striking out "statistical" in the fourth line.

Mr J. B. Nixon: The explanation is simply that the commissioner may require more returns than just returns of a statistical nature, and this gives the commission and the commissioner a wider scope to verify the information they receive.

The Chair: Any further discussion on the amendment? Shall the amendment carry? Carried. I am assuming the same vote.

Motion agreed to.

Section 30, as amended, agreed to.

Sections 31 to 36, inclusive, agreed to on the same vote.

Section 37:

The Chair: Shall subsection 37(1) carry? Same vote. Carried.

Mr Nixon moves that clause 98(1)(bh) of the Insurance Act, as set out in subsection 37(2) of

the bill, be struck out and the following substituted therefor:

“(bh) prescribing grounds for which an insurer cannot decline to issue, terminate or refuse to renew a contract of automobile insurance;

“(bha) governing the payment of premiums for automobile insurance in instalments, setting maximum rates of interest in relation to instalment payments and exempting any insurer, class of insurers or class of policies from statutory condition 1c set out in section 207; and

“(bhb) exempting any insurer, and exempting any insurer in respect of certain types of contracts of automobile insurance, from section 208a.”

Mr J. B. Nixon: The amendment to clause 98(1)(bh) permits regulations forbidding insurers from using specified underwriting grounds for refusing to issue or renew or as grounds for terminating a contract.

The amendment to clause 98(1)(bha) is intended to broaden the government's powers to specify the details of instalment premium payment plans that insurers must offer to consumers.

Clause 98(1)(bhb) is a new provision permitting regulations which exempt insurers entirely or with respect to certain types of insurance from notifying insureds under section 208a when the insurer intends not to renew or to vary a policy. Such a requirement may be onerous and impractical for insurers such as insurers of commercial fleets.

The Chair: Shall the amendment carry? Same vote.

Motion agreed to.

The Chair: Mr Nixon moves that clauses 98(1)(bl) and (bm) of the Insurance Act, as set out in subsection 37(2) of the bill, be struck out and the following substituted therefor:

“(bl) Prescribing any activity or failure to act that constitutes an unfair or deceptive act or practice under subclause 393(b)(xii), and prescribing requirements to be met by insurers that, if not complied with, constitute an unfair or deceptive act or practice;

“(bm) Prescribing classes of persons, classes of automobiles and terms and conditions for the purposes of subsection 239b(1).”

Mr J. B. Nixon: The amendment to clause 98(1)(bl) is a technical amendment to ensure consistency between the statutory enabling power and the regulation-making power. The amended regulation-making power will allow the prohibition of failures to act as well as prohibiting actions themselves.

Clause 98(1)(bm) has been amended to provide greater flexibility in drafting regulations dealing with the indemnification provision in subsection 239b(1).

The Chair: Shall the amendment carry? Carried, same vote.

Section 37, as amended, agreed to on the same vote.

Section 38 agreed to on the same vote.

Section 39:

The Chair: Mr Nixon moves that the definition of “automobile” in subsection 201(1) of the Insurance Act, as set out in section 39 of the bill, be struck out and the following substituted therefor:

“‘automobile’ includes a motor vehicle required under any act to be insured under a motor vehicle liability policy.”

Mr J. B. Nixon: The rationale is simply to clarify the meaning of the word “automobile” in the legislation.

Mr Kormos: I just wanted a question, not to the amendment, which I am opposed to, but to the definition of “spouse” in section 201. I just wanted to let you know that.

The Chair: Okay. Can we deal with the amendment? All in favour of the amendment? Carried.

Motion agreed to.

The Chair: Mr Kormos, do you have a question on “spouse” before we deal with subsection 201(1)?

Mr J. B. Nixon: In order to get into “spouse” there are—

The Chair: Are there other amendments?

Mr J. B. Nixon: I am just trying to clarify.

The Chair: I will deal with Mr Kormos's question first.

Mr J. B. Nixon: No, I am sorry. He is first.

Mr Kormos: It is the definition of “spouse”—and I am not concerned about clause (a) or (b). Now (c): To what circumstances in the application of the legislation is defining a spouse relevant, number one?

Mr Abols: Regarding the no-fault benefits.

Mr Kormos: Number two, I appreciate “have cohabited continuously for a period of not less than three years...in a relationship of some permanence if they are natural or adoptive parents of a child.” This, I suspect, emulates Family Law Act type of definitions.

Why is there no consideration of a person who may not meet either of those two conditions but

who could establish a dependency relationship, a spousal relationship? That is a horribly artificial and arbitrary definition that is being adopted there, especially the three-year requirement when, if a couple have a child, there is no time restriction. There are going to be a lot of people out there who are going to say that it is grossly unfair. Was that adopted just holus-bolus? Was there any thought given to it? Was there any thought given to how many people that is going to exclude?

Mr Abols: The thought given to it was the recognition that that is a definition that serves within the context of family law, and it is the same financial consideration that you have there, because this is the definition that determines support entitlement under the Family Law Act. So I suppose the rationale for applying it to the insurance context is that we are talking about, again, financial support.

Mr Ferraro: Let me interject as well, if I may. Indeed that definition, as I understand it, was the recommendation of Justice Osborne.

Mr Kormos: You did not accept that many other recommendations of Justice Osborne, so do not hang your hat on that now.

1550

Mr Ferraro: In fact, we accepted a lot of his recommendations.

Mr Kormos: Not the primary one.

Mr Ferraro: You just do not talk about those ones.

Mr Kormos: We will talk about them in the next provincial campaign, let me tell you.

The Chair: Mr Nixon.

Mr Kormos: I am not finished yet.

The Chair: Sorry, on spouse?

Mr Kormos: Yes, spouse.

Mr Abols: I would just also add that when you look to the no-fault benefits schedule itself, though, it is not just spouses that are covered, it is also dependants. So if you do not qualify as a spouse, there may be some kind of dependency that would entitle you to no-fault benefits. I do not have the schedule.

Mr Kormos: Fair enough. We are talking here obviously about the prospect of first-party litigation, and we are talking here about an insurance company seizing on the fact that a couple have only been together for 34 months, right? They are going to say, "Well, you are not a spouse because there has not been a three-year cohabitation." Right? I am asking you, from a point of view of an opportunity here for the

government to recognize the realities of the real world, and if it recognizes that when there is a child, it need only be a relationship of some permanence, why would the government here, in terms of recognizing the no-fault obligations of the insurer, accept an arbitrary three years? Notwithstanding that the Family Law Act has that, why would they not simply say "cohabit in a relationship of some permanence"?

Mr Ferraro: I am not sure that is a question.

Mr Abols: I think it is a policy question.

Mr Ferraro: I can answer because essentially it is a policy type of answer. I am not sure this will help you, Mr Kormos. We wanted to establish some type of consistency vis-à-vis the other statutes, and that was the decision we came up with.

Mr Kormos: Is the other description of dependence intended to, in effect, supersede the effect of the three-year period?

Mr Ferraro: That is a legal question, and maybe I would get some help from Ms Parrish.

Mr Kormos: No, that is policy.

Ms Parrish: I think the issue as to whether or not there should be a consistent definition for the spouses is a policy issue, and I think on this point my understanding is the government does think that there is some desirability in being consistent so that people know who is a spouse and who is not on a consistent basis. I do not know how the courts will interpret the word "dependant," but I think that Mr Abols is right in that the courts would look to whether or not there was an actual relationship of dependency—that is, whether once person was financially dependent upon another person—and that would be a matter of fact.

Mr Abols: I think if you are interested in reading the scope of coverage provided under the no-fault benefits schedule, you really have to look to the no-fault benefits schedule and the definition of "insured person" in that schedule, and you will see that it is much broader than simply a spousal relationship.

Mr Kormos: Is the government planning any amendments to this particular section?

Mr Ferraro: Not that I am aware of.

Mr Kormos: Are you aware of any amendments that are being presented?

The Chair: We went through this.

Mr Kormos: Let him answer.

Mr Ferraro: I am aware of some discussions transpiring.

Mr Kormos: Relating to what portions of the bill?

Mr Ferraro: I cannot recall with any degree of specificity.

Mr Kormos: Generally.

Mr Ferraro: Somewhere between page 1 and page 54.

Mr Kormos: You do not want to answer.

Mr Ferraro: No, sir.

Mr Kormos: You have no intention of answering or being candid about it.

Mr Ferraro: If I knew the answer, I would.

Mr Kormos: Oh, you know the answer, Rick. You know roughly.

Mr Ferraro: No, I do not.

Mr Kormos: Is it bigger than a bread box?

Mr Ferraro: Smaller than my hat.

The Chair: Mr Nixon, you have some amendments to propose, I believe.

Mr J. B. Nixon: They introduce a new subsection 6 and 7 to section 39. Perhaps we should just vote.

The Chair: Okay. Shall subsection 201(1), as amended, carry? Same vote. Subsection 201(2)? Same vote. Subsection 201(3)? Same vote. Subsection 201(4)? Same vote. Subsection 201(5)? Same vote.

Mr Nixon moves that section 201 of the Insurance Act, as set out in section 39 of the bill, be amended by adding the following subsections:

“(6) An insurer, with the approval of the commissioner, may offer optional benefits in excess of the benefits that must be provided under the no-fault benefits schedule.

“(7) Optional benefits offered under subsection (6) shall be deemed to be no-fault benefits and the no-fault benefit schedule applies to them with necessary modifications.”

Mr J. B. Nixon: The rationale, of course, is given with the notice of motion, but it is simply to make it clear that companies will be permitted, as they are not now permitted, to offer additional optional insurance coverages on a voluntary basis. The subsection 7 amendment requires or mandates that all those additional, voluntary coverages must comply with the various regulations pertaining to no-fault benefits, such as the 10- and 30-day delivery rules.

The Chair: Shall the amendment carry? Same vote.

Motion agreed to.

Section 39, as amended, agreed to on the same vote.

Sections 40 to 44, inclusive, agreed to on the same vote.

The Chair: Section 45, subsections 1 and 2 can carry, and we can move to—

Mr J. B. Nixon: Just a moment, Mr Chairman. I am going back to section 44. I just have a quick question. My question is, what does that mean?

Mr Ferraro: Section 44: “Section 206 of the said act is amended by adding thereto the following subsection.” I do not know the answer to that. Maybe legal counsel can help me out.

Mr Abols: You have to refer to subsection 206(1), and that section deals with misrepresentations by an insured in applying for insurance. It simply says that if you have been guilty of a misrepresentation when you do apply for your insurance, if you did not have this section, the policy would be void and you would lose out. This says that with respect to the no-fault benefits—income replacement, hospital, medical—you still get those benefits.

Mr J. B. Nixon: Okay.

Section 45:

The Chair: Shall subsection 45(1) carry? Carried. Shall subsection 45(2) carry? Carried. Same vote.

Mr Nixon moves that subsection 45(3) of the bill be struck out and the following substituted:

“(3) Statutory condition 2 set out in section 207 is struck out and the following substituted therefor:

“2(1) The insured shall not drive or operate or permit any other person to drive or operate the automobile unless the insured or other person is authorized by law to drive or operate it.

“(2) The insured shall not use or permit the use of the automobile in a race or speed test or for any illicit or prohibited trade or transportation.

“(4) Statutory condition 3(1)(a) is amended by striking out ‘promptly’ in the first line and is further amended by striking out ‘accident’ in the last line and inserting in lieu thereof ‘incident.’

“(5) Statutory condition 4(1)(a) is amended by striking out ‘promptly’ in the first line.

“(6) Statutory condition 4(8) is repealed.

“(7) The said statutory conditions are further amended by adding the following:

“4a. The notice required by statutory conditions 3 and 4 shall be given to the insurer within seven days of the incident but if the insured is unable because of incapacity to give the notice within seven days of the incident, the insured shall comply as soon as possible thereafter.

1600

"(8) Statutory condition 6 is repealed and the following substituted therefor:

"(6(1) The insurer shall pay the insurance money for which it is liable under this contract within 60 days after the proof of loss has been received by it.

"(2) The insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of statutory conditions 3 and 4 are complied with.

"(3) Every action or proceeding against the insurer under this contract in respect of loss or damage to the automobile or its contents shall be commenced within one year next after the happening of the loss and not afterwards, and in respect of loss or damage to persons or other property shall be commenced within two years next after the cause of action arose and not afterwards.

"(9) Statutory condition 7 is amended by striking out 'named in this contract' in the second and third lines.

"(10) Statutory condition 8(1)(a) is amended by striking out '15' in the first line and inserting in lieu thereof '30.'

"(11) Statutory condition 8(5) is amended by striking out '15' in the first line and inserting in lieu thereof '30.'"

Mr J. B. Nixon: As members will know, the purpose of this amendment or series of amendments is to simplify the statutory conditions that form a part of every automobile insurance contract. For example, certain time periods are made consistent with those found in other sections of the bill, and the need for the insured to go through a formal appraisal process before he or she can sue the insurer for damages sustained in an accident is eliminated.

Mr Kormos: I have a number of questions. Statutory condition 2 is struck out. What does the existing statutory condition 2 deal with?

Mr Ferraro: Perhaps legal counsel could deal with that.

Mr Abols: The existing condition has to do with prohibited use by the insured, as the marginal note summarizes. As part of your contract you agree with the insurer that you will not drive the automobile unless you are qualified to drive it and you will not let other people drive it unless they are qualified to drive it. It also captures what we still retain in the statutory condition, that you will not let anybody else drive it for an illicit purpose, drag races or things of

that nature. So it is just a prohibited use provision.

Mr Kormos: My truck just does not go fast enough for that.

I have some other questions. What does paragraph 4 in the proposed amendment mean and how does that impact on the legislation as it would have been otherwise, striking out "promptly" in statutory condition 3(1)(a)?

Mr Abols: This is one of the amendments that is designed to make these statutory conditions consistent with other sections in the bill. If you turn to page 28 of the bill, the bottom of page 28 to 29, you have a notice requirement when you sustain damage to your automobile, and that notice requirement says that you have to give notice of the incident within seven days. We simply want to ensure that there is not any conflict or any confusion, because "promptly" could certainly mean something far less than seven days, so this gives a certain benefit to the insured.

Mr Kormos: Why is "accident" changed to "incident"?

Mr Abols: Because we used the term "incident" throughout the bill and "incident" may mean something more than "accident." "Accident" has been interpreted by the courts to mean the actual use or operation of the automobile. Coverage now is extended to where you may be using the automobile not as a driver. You could be, let's say, working on the car or the passenger can open the car door and strike a cyclist passing by. So the view is that "incident" is a broader term.

Mr Kormos: Paragraph 5, "statutory condition 4(1)(a)": I have an idea what that is about. I wonder if you could explain it.

The Chair: Striking out "promptly?"

Mr Kormos: Yes.

Mr Abols: Same explanation as I gave you with respect to paragraph 4. It is just a notice of time period that deals with property damage and we have extended it effectively to seven days.

Mr Kormos: What is statutory condition 4(8) and why is it being repealed?

Mr Abols: Statutory condition 4(8) is that appraisal requirement currently in the statutory conditions. Before you can sue for property damage or if there is a disagreement about what the insurer says your car is worth and what it will cost to fix it, you have to submit to a formal appraisal process.

You will probably have to do that anyway or go through some appraisal, if you are going to sue because a court would require some evidence as to what your damages were. This is simply a procedural obstacle that we did not see any use for and therefore eliminated it. Now you as the insured, if you have a dispute with your insurer, can go straight to court.

Mr Kormos: The time limitation in 4a appears to be generous to the injured party. Perhaps Mr Ferraro could answer this more appropriately. Do you not foresee argument, because obviously defence often raises failure to comply with limitation periods as a defence. Do you not see argument about this, in particular because it says, "if the insured is unable because of incapacity to give the notice" and the lack of definition there and the vagueness. Do you not foresee litigation over that?

Mr Ferraro: I would not preclude anything from being subject to litigation. It is anticipated that it is reasonable.

Mr Kormos: From a policy point of view, when you and Murray Elston sat down and decided to use the word "incapacity," did you look at alternatives?

Mr Ferraro: I think that was Mr Elston's word as opposed to mine.

Mr Kormos: Now it is pass-the-buck time. Wait until after this bill is passed, wait until the next election. Will it be pass-the-buck time? Will the people of Guelph ever be told—

Mr Ferraro: Yes, they will.

Mr Kormos: "They made me do it. I was only following orders." It will be the old Nuremberg defence in Guelph at election time.

Mr Ferraro: I was trying to be facetious and it will not happen again.

Mr Kormos: "Honest, folks, Murray Elston threatened all sorts of things"—

Mr Ferraro: No, he did not.

Mr Kormos:—"about how he would do it and he promised me all that much more and the city of Guelph will get none of it."

Seriously, what were the alternatives that were considered?

Mr Ferraro: The reality of the situation, as I am sure Mr Kormos knows, is that much of the verbiage and much of the writing is prepared for us by our legal department. We rely on them, quite frankly, to put in the words, and indeed I guess there was some consultation with the Attorney General's office on the wording of it because it is a statutory bill—

Mr Kormos: What other kind of bill is there?

Mr Ferraro:—that it is precise and acceptable vis-à-vis the judicial system we have in place. So I would think it is reasonable. I do not know if Imants wants to expound on that.

Mr Abols: It is an improvement over the current statutory conditions. It does give the insured the benefit of the doubt. It is our view that it a better provision in that respect. There is certainly litigation today over those statutory conditions, and I see this provision as cutting out some of that litigation.

Mr Ferraro: If Mr Kormos has a motion he would like to present to us, we would consider it.

Mr Kormos: Why don't you guys clean up your own mess?

Mr Ferraro: Okay. Thank you.

Mr Kormos: Oh, no, I have more questions. On to the next page: Can you contrast the existing statutory condition 6 and what is proposed to replace it, distinguish one from the other?

Mr Abols: Essentially what this does is reconstitute the current statutory condition 6 but deleting the references to the appraisal mechanism in subsection 4(8).

Mr Kormos: I am particularly interested in the limitation of actions and the fact that there would not be consistency in that subsection.

Mr Abols: Again, that is simply a reflection of what you have today in statutory condition 6(3), except that we have extended the limitation period with respect to damages to the person or other property outside the vehicle to two years from the current one year. So we have extended the limitation period.

Mr Kormos: Because what confuses me is that whole business of limitation periods came up the other day and Mr Endicott pointed out to me that the bill provides for an expansion of the limitation period in terms of actions against one's own insurer to two years from the current one year.

Mr Abols: That is correct, with respect to personal injury and damage to other property.

Mr Kormos: If that could have been expanded, and rightly so, because the Highway Traffic Act limitation period is two years—

Mr Ferraro: That is right. I told you that.

Mr Kormos:—if only for ease, the more consistency there is among limitation periods that relate to the same type of thing, that is going to save a lot of grief and I guess it will save some lawyers being hauled on the carpet or paying their \$5,000 deductible. So it was more than

reasonable to see the limitation period for actions against one's own insurer increased to two years, if only because that made it consistent with the limitation period under the Highway Traffic Act. Why would you retain a limitation period of one year and generate difficulties when it would be so easy to relieve everybody and make everything two years?

1610

Mr Abols: First of all, I distinguish between the limitation period in the Highway Traffic Act and this limitation period. Limitation under the Highway Traffic Act governs actions against the owner or operator of the automobile. It has nothing to say about actions against your insurer.

Mr Kormos: Quite right.

Mr Abols: The difference is really in the treatment of property as opposed to people, and we feel that people are more important than property. So we give two years for people to bring actions with respect to their own personal injuries.

From a litigation perspective, I suppose the concern is that when you are talking about property damage, if you do not deal with those issues in a relatively expeditious way, the evidence deteriorates and it is very difficult to make an assessment as to what really is the loss you have sustained there. Was it really as a result of the accident or through rust and corrosion because you did not bring the action for two years? That was a policy decision. I really do not see that there is any sort of legal answer to that; that is strictly a policy issue. I defer to Mr Endicott again on this.

Mr Endicott: We have seen in the committee hearings where injuries to people can be manifested after a long period of time, but with cars the injury to the car is fairly ascertainable almost immediately after the accident and one year is sufficient time in which to provide the claim to the insurer so that the appropriate repairs can be made.

Mr Kormos: I am interested in your comment that one of your considerations was that people were more important than property.

Mr Abols: The distinction is made in this section. I think it would touch that kind of distinction.

Mr Kormos: You have participated in the drafting of this stuff.

Mr Abols: Yes.

Mr Kormos: Was that an overriding consideration?

Mr Abols: In respect of what?

Mr Kormos: In respect to your draftsmanship of this legislation, Bill 68?

Mr Ferraro: That was one of the considerations.

Mr Abols: That was one of the considerations.

Mr Kormos: He jumped in there, did he not?

Mr Ferraro: He is just a poor, underpaid bureaucrat.

Mr Kormos: I think he is doing just fine.

Mr Abols: I simply took my instructions from my client and produced legislation which reflects those instructions.

Mr Kormos: But were part of those instructions that people are more important than property?

The Chair: To the amendment.

Mr Kormos: Yes.

Mr Abols: I do not know that that language was used, but I think that is the intention and the policy reflected in the legislation.

Mr Kormos: Was that a consideration that was an overriding consideration in your drafting of, let's say, subsection 6(3)?

Mr Ferraro: Mr Chairman, with respect, Mr Kormos, I am not sure it is fair for Mr Abols to try to address that—

Mr Kormos: We were doing just fine here.

Mr Ferraro: —but if Mr Kormos wants to hear me say that I think people are more important than property, then I have no reluctance whatsoever in saying it.

Mr Kormos: Of course you are going to say that. It sounds good as you are picking their pockets—

Mr Ferraro: Perhaps Mr Kormos's views are different on the matter. I do not know.

Mr Kormos: —and cracking their bones and not compensating them.

What are you saying, Mr Ferraro, you would rather I did not ask these questions of the draftsman?

Mr Ferraro: No. I think, quite frankly, Mr Abols is a very good legal counsel and my impression is that some of the questions being asked were not necessarily part and parcel of his responsibility.

Mr Kormos: I trust that if he was not able to answer, he would say so.

Mr Ferraro: I just thought I would be somewhat helpful.

Mr Abols: I can answer the question in that the instructions were technical instructions and they were not couched in those terms, but certainly the thrust of the legislation is to improve insurance for consumers in this province. That is I think reflected in the policy, but I cannot speak to all aspects of the policy. My principle function here is to provide legal advice, so I really comment on any policy issues.

Mr Kormos: Quite right, because what I am getting to is, was that the same overriding consideration in writing the threshold?

Mr Ferraro: We knew what you were getting to.

Mr Kormos: Of course you knew. You would not have kept on trying to quieten him up if you did not.

Mr Ferraro: No, no.

Mr Kormos: You want to avoid that. You want to avoid that like the plague.

Mr Ferraro: It is unfair, and you know this, for a bureaucrat to be asked about policy decisions to that degree.

Mr Kormos: But he seems to know quite a bit. You want him quietened up.

Mr Ferraro: He is definitely a good lawyer.

The Chair: I have Mr Nixon.

Mr J. B. Nixon: I would just like to suggest that the question be put. If we want to discuss the threshold, let's get to the threshold section.

Motion agreed to.

Section 45, as amended, agreed to.

Section 46 agreed to.

Section 47:

Mr Kormos: We are of course concerned about this because thousands of good people across the province are being denied renewal of their insurance policies. That is one of the things that we have been raising time after time after time with the minister and he has been telling us to tell them about it and he will get the superintendent on it right away, and the superintendent of the insurance gums the issue for a while and then spits it back into the writer's lap and says, "There is not much I can do about this." What—

Mr Ferraro: Mr Chairman, can I interrupt?

Mr Kormos: You should ask me if you can interrupt.

Mr Ferraro: Only for this reason. As I understand it, there is conceivably an amendment to this section, and I am wondering if we could stand this one down until tomorrow.

The Chair: Section 208a?

Mr Ferraro: Until tomorrow, yes. Section 208b, actually.

Mr Kormos: Wait a minute. Rick Ferraro, the Liberal parliamentary assistant, member of the provincial parliament for Guelph—

Mr Ferraro: The great riding of Guelph.

Mr Kormos: —told us but moments ago that he was not sure about which sections had amendments. Now he tells us that he is beginning to have suspicions.

Mr Ferraro: My very capable staff has indicated to me that this may be one of the amendments.

Mr Kormos: Which other sections might there be amendments about so that we can clear the air now and not waste a whole lot of your staff's time?

Mr Ferraro: I am not familiar.

The Chair: Do you want sections 208a and 208b stood down?

Mr Ferraro: Just section 208b.

Mr J. B. Nixon: I am not clear as to what is happening. Section 208a is being—

The Chair: No, we are going to deal with 208a. Mr Ferraro would like to stand 208b down, but we have not finished section 208a yet.

Mr J. B. Nixon: Okay. Can I speak on section 208a?

Mr Ferraro: No, I interrupted Mr Kormos. Interjections.

The Chair: Okay. Mr Nixon on section 208a.

Mr J. B. Nixon: I am not clear where we are.

The Chair: We are on page 25.

Mr J. B. Nixon: Yes, I know, section 208a. I would like to say that it is good to see this provision in the bill because it obviously addresses some real problems that have been identified by many, perhaps all, MPPs in their constituency offices. But what happens if an insurer and its company does not give the required notice?

Mr Ferraro: If the insurance company does not give the required notice to the broker or to the insured?

Mr J. B. Nixon: There are two questions, if the insurance company does not give the proper notice to the broker and if the broker does not give the proper notice to the insured.

Mr Ferraro: Or in the case of an insurance company that does its own underwriting, the

insurance company does not give proper notice to the insured.

Mr J. B. Nixon: That is right.

Mr Ferraro: Mr Abols, maybe can be more specific.

Mr Abols: Subsection 4 of that section addresses that situation. The contract insurance is still in force until you have complied with that notice of provision. So you still have coverage until the insurer or the broker has given you proper notice.

Mr J. B. Nixon: How will the consumer know that? What if they receive a notice of termination on the day before they expected to have a new policy written? They panic, they are upset, and legitimately so. Who is going to tell them: "Don't worry. You still have a policy of insurance?"

Mr Abols: I think that situation would actually be of more than, let's say, academic interest. If the person has an accident in the meantime and there is the question of whether there is insurance coverage, if the consumer can establish that during that period he assumed he had coverage, or not assumed but I guess his lawyer would advise him, "Let's see what kind of notice you received when your policy lapsed," it could be argued that because of this provision, that person was covered at that time.

Mr J. B. Nixon: I think so, effectively.

1620

Mr Ferraro: If I could interject too, I think it is an excellent point. I was just curious, quite frankly. This could be one of the inclusions in the new policy that is presently being developed. It is a good suggestion.

Mr J. B. Nixon: It could be right on the policy form, or the alternative is to—let me get at it another way. I am sure the broker has authority to say, "Don't worry, you are covered."

Mr Ferraro: The problem is greatly enhanced, however, when you have a direct writer.

Mr Abols: I could perhaps just add that we do have officials in the ministry working on the standard automobile insurance policy and redesigning that policy so that provisions like this and others are highlighted.

Mr Ferraro: I think we can take it as a given that we will insist on that particular concern being addressed in the policy so at the very least it is in written form for the insured. It is a good suggestion.

Mr Kormos: How does this vary from the notice requirements now when it is nonrenewable?

Mr Ferraro: I do not think there are any in the present situation, are there, Mr Abols? This is a team effort.

Interjections.

Mr Ferraro: Maybe Mr Endicott can—

Mr Endicott: I am not sure what Mr Kormos is—

Mr Kormos: How does it differ from what is currently done?

Mr Endicott: There is no specific legal obligation at the moment for insurers to provide notice of cancellation at any given point in time prior to the expiry of the contract.

Mr Kormos: And at the expiry of the contract?

Mr Endicott: Once again, the coverage would just cease and they would no longer be covered.

Mr Kormos: What happens under this proposed section if the insurer notifies the broker but if the broker does not in turn notify the insured? The fact is that a contract of insurance is in force until there is compliance with subsection 1.

Mr Ferraro: I think it further substantiates why we should have it very clear in the policy itself.

Mr Kormos: No, no.

Mr Ferraro: Am I missing something?

Mr Kormos: You are not listening.

Mr Ferraro: I am listening. I just do not understand you.

Mr Kormos: What happens when the insurer merely notifies the broker? He has complied with subsection 1, the contract of insurance is no longer in force and the insured is left out in the cold.

Mr Endicott: Wait a minute. You asked a question about the existing system now.

Mr Kormos: Now I am talking under this amendment.

Mr Endicott: If you are talking under this, I believe Mr Abols referred to subsection 4. That is the compliance section and that would apply whether it was a broker or a direct writer.

Mr Kormos: Quite right, but you do not understand. Take a look at this. What happens when the insurer merely notifies the broker? He has complied with subsection 1.

Mr Endicott: The broker has to comply with subsection 2, though.

Mr Ferraro: No, the insurer has to comply with subsections 1 and 2.

Mr Kormos: That is right. If the insurer has complied with subsection 1, the contract of insurance is not renewed. If the broker fails to comply, that does not bind the insurer. You see that "or" between paragraph (a) and (b).

Mr Ferraro: I am not a lawyer but my understanding is, and maybe Mr Endicott can embellish this a little bit, that if indeed the insurer contacts the broker and the broker does not notify the insured, then compliance with the statute is not in existence. Subsequently, the coverage would still be available and in force.

Mr Kormos: No. Your counsel is here now. Perhaps I should repeat this.

What I am concerned about here, looking at 208a in section 47 of this bill, what happens when the insurer complies with subsection 1 and opts to notify the broker rather than the insurer? He then as the insurer has complied with subsection 1 by notifying the broker, so the contract is not deemed to be renewed. The insurer has no more liability.

What happens when the broker does not comply with his implied responsibility? The insured is not insured any more because the insurer has complied with subsection 1. The broker has been negligent, and you are right, you could sue the broker, but what if it is like some of the clowns that have been operating like the one down in Niagara South, around there, who was scamming premiums off victims and pocketing the money? What if you are dealing with that type of insurance broker who does not have enough assets or who is flying the coop?

How are you protecting the insured there when all the insurer has to do is notify the broker if he opts to? Why would you include giving the broker notice? Why would you not merely require him to notify the insured? The broker can be negligent and not comply, and then the poor insured is real victim. You are right that he can sue the broker. Big deal. If the broker does not have assets or if the broker disappears or if the broker is a flim-flam man or a fly-by-night artist or a scam man, he has nothing there to sue and this guy is out in the cold.

Mr Abols: He is not out in the cold because until the contract expires, he has coverage. After the contract has expired, he would have to get a renewal notice directly from the insurer. If he does not get a renewal notice, it would surely occur to the insured to check and find out why did he not get a renewal notice. I would do that if I did not get a renewal notice on my car.

Mr Kormos: But the purpose of this section is to give the insured's notice that his insurance is going to be over in 30 days, minimum.

Mr Abols: Right.

Mr Kormos: What if the insurer opts to do what is in paragraph (b), not in paragraph (a)? What if the insurer opts to notify the broker and the broker, for whatever reason, because the secretary was sick and misplaced the correspondence—

Mr Abols: I agree. On the strict reading of this, he has complied with his statutory obligations.

Mr Kormos: That is right. Surely you want real notice.

The Chair: So amendment to (b) to give notification both to the broker and the insured because if you look to subsection 3, the broker is not held accountable to subsection 2 if the broker places with another insurer a replacement contract containing substantially similar terms.

Mr Kormos's point is, if you have a crack in the gap for notification—

Interjection: A crooked broker.

The Chair: Not necessarily a crooked broker, you may have a situation where somebody is in part-time or whatever, but why not include a requirement that notification go to the insured as well as the broker? Mr Nixon, because I am interfering too much.

Mr Abols: That could be a possible amendment or also it could be even simpler than that: simply do away with the broker notice requirement and have the insured always notified directly.

Interjections.

The Chair: I have Mr Nixon first, just to try to keep some order here.

Mr J. B. Nixon: Can I suggest that perhaps the parliamentary assistant—

The Chair: We could put this one aside as well.

Mr J. B. Nixon: The parliamentary assistant may want to put this aside.

I notice Mr Endicott waving his hand. He wants to say something.

Mr Endicott: Just commenting in terms of the intent of the provision, it is intended to allow the insured to have an opportunity to find alternative coverage. It is not directly intended to remind the insured that his contract is expiring at a particular time. They do have that responsibility themselves. It is true that if the broker in a particular instance was negligent and did not advise the insured of the fact that it was going to terminate, he would not have as much time but there is still a responsibility on the part of the insured to ensure

that he has continuing coverage under the contract.

The Chair: I will interrupt here for a second. How can you expect someone to—

Mr Ferraro: I think it is an excellent point that has been brought up and—excuse me for interrupting you, sir—if we could set that one down, we will try to clarify it because it certainly was not the intent of the legislation to put the insured out in the cold. It is an excellent point.

The Chair: Probably what we should do at this point in time is recess until tomorrow morning at 10 o'clock and remind the committee that we are in committee room 2 all day.

Mr Kormos: Wait a minute.

The Chair: No, we had an agreement to do that. Thank you.

The committee adjourned at 1630.

CONTENTS

Tuesday 13 February 1990

Insurance Statute Law Amendment Act, 1989	G-1005
Afternoon sitting	G-1025
Adjournment	G-1051

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair: Pelissero, Harry E. (Lincoln L)

Vice-Chair: LeBourdais, Linda (Etobicoke West L)

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Carrothers, Douglas A. (Oakville South L)

Charlton, Brian A. (Hamilton Mountain NDP)

Furlong, Allan W. (Durham Centre L)

Nixon, J. Bradford (York Mills L)

Runciman, Robert W. (Leeds-Grenville PC)

Sola, John (Mississauga East L)

Velshi, Murad (Don Mills L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

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Kormos, Peter (Welland-Thorold NDP) for Ms Bryden

McClelland, Carman (Brampton North L) for Mr Furlong

Oddie Munro, Lily (Hamilton Centre L) for Mr Carrothers

Philip, Ed (Etobicoke-Rexdale NDP) for Mr Charlton

Sterling, Norman W. (Carleton PC) for Mr Wiseman

Clerk: Carrozza, Franco

Staff:

Revell, Donald L., Chief Legislative Counsel

Witnesses:

From the Ministry of Financial Institutions:

Parrish, Colleen, Director, Policy and Planning Branch

Abols, Imants, Solicitor, Legal Services Branch

Endicott, Eric, Manager, Policy Co-ordination



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Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on General Government

Insurance Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Wednesday 14 February 1990

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

CONTENTS

Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Wednesday 14 February 1990

The committee met at 1011 in committee room 1.

INSURANCE STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

The Chair: I recognize a quorum.

Mr Ferraro has information with respect to the request that Mr Runciman made yesterday. I believe Mr Philip had the same request.

Mr Ferraro: Mr Chairman, members of the committee, essentially dealing with the issue brought up by the opposition as to the timing of the dispersal, I guess, of the summary of the rate filings being compiled by Don Scott, the new and recently appointed insurance commissioner, it is safe to say that the committee will not be in receipt of it this week.

Mr Scott—and it is obvious by the fact that there are ads in the paper—is just in the process himself of hiring enough staff. In any event, he is in the process of completing his own investigation and perusal of the filings. It is anticipated that the summary will certainly be released prior to the House being called back. When that is available, it will immediately be dispensed to the members of the committee and that would be inclusive, obviously, of the critics of both parties, as promised.

Mr Philip: I have a question. Are the valentine hearts that are on our tables a present from the minister or from the chairman?

The Chair: From the chairman.

Mr Philip: The chairman being nonpartisan, then, I do not consider it in any way a bribe. I would have been very suspicious if it had come from the parliamentary assistant to the minister.

The Chair: They are courtesy of the Chair.

Mr Sterling: I had asked the parliamentary assistant for responses to Mr Nader's questions. Am I going to get them?

Mr Ferraro: You had it. I gave a response yesterday and I apologize you were not here. I waited until the end and unfortunately you were occupied.

Mr Sterling: Is there a written response?

Mr Ferraro: It is in Hansard. The response is in Hansard. If I can repeat, for Mr Sterling's benefit, Mr Chair, it is that, according to Hansard—and I do not have my copy of it here—it was indicated that essentially—

The Chair: Maybe we will get the clerk, before you go much further than that.

Clerk of the Committee: Mr Sterling, I received a copy from the People Against the Insurance Nightmare group and, unfortunately, in my copy there was no statement from Mr Nader. Mr Kormos checked his own and it is in his brochure; however, it was not in mine. My information to the committee was correct in the way that it was not in mine, but unfortunately it was tabled perhaps to the members and I do not have the copy of it now.

Mr Ferraro: Hansard essentially recorded: "There are a number of questions the committee should ask the powers that be." These are to the effect of Mr Nader's words and I will submit them for the record. On checking with the clerk, he is absolutely right. They had not been received so essentially the position is, the minister has not received any specific requests from Mr Nader and, as such, in my view, there is no compulsion to respond to something he has not received.

The Chair: The clerk has informed me that there is a series of about six or eight questions he will be forwarding to the minister for response.

Mr Philip: When can the minister be expected to respond?

Clerk of the Committee: The letter will go out this morning with the statement from Mr Nader to the minister, hand-delivered to his office, and we will await his response.

Mr Kormos: If I may speak to that, it would appear, and certainly through no fault of the clerk, that the questions by Mr Nader were part and parcel of the materials filed. Do not shake your head yet, Mr Ferraro, because indeed they were filed and one would have thought that especially you would have taken great care to examine each and every submission. If you had examined the materials filed by PAIN you would have seen two sheets that indeed were filed as part of that complete package that spoke of these

being questions—and making reference to, I believe, 15 January—questions that Mr Nader would ask of this committee.

So please, Mr Ferraro, do not shake your head in defence of the ministry's failure to have responded to those. They were there. They are there now and we can accept the fact that there was a foulup on the part of the ministry. There is some biblical saying about casting the first stone. The material was there so please do not attempt to relieve the ministry of its obligations by saying it was not there. It was an oversight, obviously, and all of us are anticipating the speedy provision of those answers.

Mr Ferraro: Briefly, Mr Chairman, I would say to the honourable member that, indeed, staff checked their files, I checked my files and there was no information. Notwithstanding the fact that Mr Kormos says I received the information, it was not there. There is absolutely no intent on our part to avoid a response, but I say with great respect that if we do not receive it—and I am making the assertion we have not received it, neither myself nor staff, we perused the files extensively—then we cannot respond.

Mr Kormos: I have a copy of it marked as an exhibit.

Mr Ferraro: Then maybe we can get a copy of your copy.

Mr Kormos: Exhibit 129.

Mr Ferraro: We got a copy yesterday.

Mr Kormos: I gave you an additional copy yesterday. I have a copy, but marked as an exhibit filed in January.

Mr Ferraro: I think the point is you want a response and there will be one.

Mr Philip: My question relates to the filing of the information on rates, so if somebody wants to continue on this one topic, then just keep me on the list.

The Chair: I think Mr Sterling is on another topic.

1020

Mr Philip: Okay. If I understand you correctly we will receive, not this week but some time before the House convenes, the rates filed by the various insurance companies. Is that in a summary form, as was originally suggested, or will we actually get the rates?

Mr Ferraro: My understanding is there will be a summary of the rate filings and then I am almost assured that certainly, and as soon as they are available, as soon as Mr Scott can compile them and finish with his own investigation, quite

frankly, the committee members, which includes the critics, will receive it posthaste.

Mr Philip: What form does this summary take? I mean, what is a summary? Do we get the mean? Do we get the median? Do we get the average? You can do a number of things with summaries. If you have a good statistician you can show practically anything you want, depending on what it is that you are taking. That is why I was concerned that we get a sample of at least the larger carriers to find out what rates they, in fact, are filing. I do not expect to have the names of the companies. I am quite prepared to accept that it could be company A, B, C and so forth, but I am just concerned that the summary, if it is in summary form, tells us exactly what it is summarizing and how it was arrived at, because you can certainly skew a summary in any form you want.

Mr Ferraro: I share that assertion, quite frankly. Whether you did it with actuaries, economists or whatever, you can just about use any statistic to suit your purpose. The specific answer to your request, sir, is that I am not sure exactly what form it is. My understanding is that it will be a summary of the rate filings and that it will provide a degree of insight into the rate filings of the approximately 140 insurance companies. To what degree I do not know, to be perfectly candid.

Mr Philip: What would be useful would be if we could have it in terms of geography. What will the average rate be in the major urban cities? What will the range be in each of the urban and rural cities? It might be useful if we also had the median. Forgive me for being technical but I got a 98 in statistics in graduate school. I have forgotten 98 per cent of it since then.

Mr Ferraro: I certainly did not get 98 in statistics. The only thing I can say to you is that it may be that the summary was going to include most, if not all, of your requests. It may be, quite frankly, that it was not. I truthfully do not know. The only thing I can tell you, sir, is that I will pass your concerns on to Mr Scott and we will see what comes of it.

Mr Philip: Okay. Do I take it that, since I am not a regular member on the committee but have been substituted in for this bill only, I will be the one who receives it as a member of the committee?

Mr Ferraro: Members of the committee will receive it, but if you want a copy, there is no problem.

The Chair: We can make sure that happens.

Mr Philip: Because it is more meaningful for the people who have served on the hearings in this committee to receive it than other people.

The Chair: Can we leave it that when it becomes available, you check with the clerk or give the copies to the clerk and let the clerk distribute it to the members of the committee as it is comprised today?

Mr Philip: What I usually find useful, too, on the committee that I chair, is to advise the members the day on which it is going to be released so that they can be ready. There is nothing worse than getting a reporter who calls you and says, "What do you think of so-and-so? I want a comment," and you have not had an opportunity to look at it. I think that is true of ministry people as well as opposition people. So it would be useful if we could have some indication, maybe a couple of days in advance, when it is going to be released; and that it not be released at four o'clock on a Friday afternoon. That is not the best time to have things released. Nine o'clock on a Friday morning is a good time.

Mr Sterling: In the package of materials we received today there was exhibit—I cannot read the number—2-71(c)—it does not make sense. Anyway, it is a Report on Estimated Costs under the OAIB Reference Hearing R-89-1 No-fault Proposals for Ontario Private Passenger Automobiles, prepared for Blake, Cassels and Graydon, counsel for the industry coalition, by the Wyatt Company, dated 17 April 1989. Where is this coming from? There is no attached letter.

The Chair: The clerk will determine the source.

Mr Sterling: We have not had that information before?

Clerk of the Committee: This is an addition. You will note it is 71(c). You already have 71(a) and 71(b).

Mr Sterling: Where did we get 71 from?

Clerk of the Committee: That is what I am going to find out.

Mr Kormos: On another matter, you might recall, Mr Chairman, that some time ago I mentioned to this committee that I was going to be receiving a petition from Colleen Vanier of Dorset Place in Niagara Falls regarding Bill 68, regarding this threshold legislation. What Ms Vanier did was prepare a very basic form, a very basic petition, and went to shopping plazas in the Niagara Falls area. She spoke with some 304 people about this legislation. Again, this is in the

Niagara Falls area. Mind you, there are people who participated in this survey like Shirley Theal, Hodgkins Avenue in Thorold; people like the Pelisseros, B. Pelissero and P. Pelissero—both of whom indicated their vociferous opposition to this legislation—from Niagara Falls; people like Mike Wiggins and Albert Bell from 140 McAlpine Avenue in Welland; people from Fort Erie, Niagara-on-the-Lake and St Catharines.

Of the 304 people who presented their names and addresses, only four indicated their support for this legislation. As I say, that is from an area where, by and large, the bulk of the people are from Niagara Falls; an area which, if I recall, is held by a government backbencher.

The Chair: Do you wish to file that?

Mr Kormos: Yes. I realize that this is getting grating as I carry on. I am going to file this because it is, in my view, representative of opinion across the province. When Mr Ferraro told the Toronto Sun on Monday morning his assessment of public response to this bill during the course of these hearings, he was candid in his assessment of public response to this. As I say, he would be pleased to know that his assessment that the committee has been hammered is shared by so many people across Ontario, indeed, obviously, in my view, the vast majority of people in the Niagara Falls and the Niagara Peninsula area. So, I would indeed ask the clerk to receive these and I thank Ms Vanier for her interest, her commitment to the rights of the people across Ontario, the drivers, taxpayers and victims.

She recognizes that this is bad legislation, that it is going to create profits of anywhere from \$800 million to \$1 billion in the first year alone on the backs of taxpayers, drivers and, sadly, victims. She knows it is bad legislation. She knows she is being betrayed by the government. She knows that the Liberal government is basically taking a dive, if you will, biting the canvas—for what reason, who knows? One can only speculate.

1030

She in Niagara Falls, along with people like the good folks in Newmarket who have written to this committee indicating, "The corporation of the town of the Newmarket opposes the enactment of Bill 68 and urges the Premier of Ontario to reconsider Bill 68 so as to ensure that the residents of the province of Ontario and those travelling in the province of Ontario"—tourists. Perhaps the sign down in Fort Erie should say not only that studded tires are banned in Ontario, but

that if you get in an accident in Ontario, if you happen to be from some other jurisdiction, watch out because you are not likely to be compensated even if you are an innocent victim. Perhaps that is what we should be telling people who travel to Ontario from other provinces and from the United States.

The town of Newmarket says no to Bill 68 and says we have to ensure that the residents of Ontario and those travelling in Ontario who find themselves victims of motor vehicle accidents have access to fair and equitable compensation.

Talking about specific plans, this is a specific plan to deny injured persons access to fair and equitable compensation, so there is some specificity here. It is not in line with the promise that the Premier (Mr Peterson) made.

Why are you people letting the Premier drag you all down? I do not understand it. Speak up. Stand up. Stand up to him. He is but one person in the caucus. His personal popularity is sliding. You are not going to be able to ride the Premier's coattails in the next general election. Basically you are on your own, so now is the time to speak up, speak out and follow the direction given to you by so many people across Ontario saying, "No, this is no good and it's not acceptable."

The Chair: In answer for Mr Sterling, exhibits 71(a) and 71(b) were filed by the Motorcyclists' Coalition on Insurance, so this was an addendum to their presentation.

Mr Sterling: Thank you very much.

Section 47:

The Chair: Moving on to clause by clause, I believe there is an amendment. We had some discussion yesterday on section 208a of the act.

Mr J. B. Nixon: As you may recall, there was some discussion in committee yesterday about the ability to protect the consumer if notice is not given by the broker to the consumer of termination of a contract in accordance with the proposed section 208a. I understand that an amendment to section 47, specifically section 208a, has been drafted by legislative counsel or the ministry, which would effectively close that loophole.

The Chair: Mr Nixon moves that subsection 208a(4) of the Insurance Act as set out in section 47 of the bill be amended by striking out "subsection (1)" in the last line and substituting "subsections (1) and (2)."

Mr J. B. Nixon: The effect is that in this case once a broker has received notice from the insurer and the broker fails to notify the insured, the contract of insurance continues in force,

notwithstanding notice having been given by the insurer.

Mr Kormos: I appreciate the cleanup that is being attempted here. I have to see this. I still have some problems with this, because again, at first glance it appears to clean up the obvious problem in the section, but let's take a look at what the impact is. If the insurer complies with his end of the deal or complies with his obligations, the insurer surely is going to argue that it has done everything it can do. It is a distinct entity from the brokerage or the broker. Yet what you are doing by virtue of this is suggesting that if the broker does not do something that it is compelled to do, then the insurer retains its obligations under the contract. I ask for your direction. Can you do that?

Mr Abols: This will be a statutory provision and it is a statutory provision that will be binding on the insurer. You cannot override a statutory provision by, let's say, a term of the contract which says, "Notwithstanding what the broker does, if he does not give you notice I am not going to be liable," "I" being the insurance company. This is the effect of this provision.

Mr Kormos: Are you creating an unnatural relationship between an insurer and a broker by doing this?

Mr Nigro: If I could speak to that, I think what you are doing there is, because the obligation, as you have correctly pointed out, would be on the insurer if the contract were to continue, you can bet that insurers with relationships with brokers, and they do they have an ongoing relationship with brokers, would do follow-up, would do what I would call a "bring forward" on any notice that was applied to an insured through a broker to ensure that notice had been acted upon by the broker or that a replacement contract had been arranged. I do not think an insurance company would want to be obliged to continue the contract if that notice were not given. There is in practice an ongoing relationship between brokers and the companies they carry in any event.

Mr Kormos: You are starting to persuade me a little bit. What about the fact that the insurer here is on the hook but the broker is not, because his obligations vis-à-vis a contract are deemed to carry on, but there is no sanction here against a broker. There is a sanction against an insurer because the insurer remains on the hook if it cannot prove, and I trust it would have to prove that it gave that notice. What about the broker, though? What are the sanctions against the broker?

Mr Nigro: I would say there are three sanctions against a broker. The first sanction is that the failure to give notice under clause 208a(1)(b) would be an offence under the act. The second sanction would be that if an insurer incurred liability as a result of the continuation of the contract for which notice was failed to have been given, I think the first thing an insurer would do would be to look to be indemnified by the broker. I think that is another sanction, a commercial sanction. The third sanction, which is also commercial in nature, is that I think the insurer would wonder whether it would carry that broker any longer. I guess that is a discipline, but it is not a legal one; it is discipline within a marketplace context.

Mr Kormos: In terms of notice, is there provision in the bill or in the act for what constitutes notice?

Mr Nigro: My understanding is that notice from insurance companies is usually done on a 30-day basis. The reason we add the 15 days if you go through the broker is that if the broker can canvass the market to get a better replacement contract, that gives him two weeks to do so.

Mr Kormos: Yes, but what constitutes notice? Regular mail?

Mr Nigro: Under the Insurance Act, if you look at the notice provisions, it is regular mail under the amended section 15.

Mr Kormos: Merely regular mail.

Mr Nigro: I think so.

Mr Kormos: I do not think you were in Ottawa, but concerns were raised about the absence of the French language in statutory forms and now we are getting down to notice. I am not sure this is the sort of thing that falls under the provisions of Bill 8, but what consideration is being given to ensuring that this notice be given in at least two languages?

Mr Nigro: Before attempting to answer that question—actually I do not think I can answer that question—I want to correct a statement I just made. I misspoke. When it is a notice on a person, it has to be by first class registered mail addressed to the person's last known address. I guess that is what the notice would be.

Mr Kormos: That obviously makes all of us a little more comfortable.

Mr Nigro: As for whether the notice would be available in the French language, I cannot speak to that.

Mr Abols: I think that situation would probably be governed when you initially enter

into the contract with the insurer. Often the insurer asks—it has been my personal experience—whether correspondence should be in French or English and then it would follow from that. I am not sure if that is an industry-wide practice, but I think that is something the insured and the insurer could work out between themselves.

Mr Kormos: Wait a minute. Perhaps I should ask the parliamentary assistant, because maybe this is a policy issue. Really, what does the government have to say about this, the government being supportive of French language rights across the province of Ontario and doing everything it can to ensure that francophones have access to services in their own language? At least that is the impression the government is trying to create until it gets to Sault Ste Marie. What is in store here, especially in view of what we heard last week in Ottawa?

1040

Mr Ferraro: Bearing in mind that not just the government but all parties are supportive of French-language services and rights vis-à-vis Bill 8, I can tell the honourable member that the policies and contracts that are being drafted by us certainly will be available in English and French. The statutory legislation certainly will be translated into French. The difficulty with that, however, not to be totally repetitive, is that legislative counsel, essentially under the auspices of the Attorney General, which does all the translation for all the statutes, pretty much regulates the timing of the translation and indeed will be done subsequently.

Mr Kormos: That was the explanation you gave and I am not going to rehash that. I am talking about these notice provisions. It is a very important part of the whole scheme, this purporting to be a consumer's right to notice regarding nonrenewal. What are you going to do to ensure that the notice is given in both French and English? I appreciate that in some areas of the province that will not be particularly relevant. Where I come from, in Welland-Thorold, it is very relevant because we have a large francophone community. Many people might be better notified if the notice were in the French language because of French being their first language, as compared to a second language. That applies to many other parts of the province as well. What is the government going to do with this notice?

Mr Ferraro: Let me say this, I am not sure it is going to satisfy you completely, but certainly all the documentation will be in both official languages. At this juncture—it is something we

can look at—we are not compelling insurance companies in all cases to send out both translations, if you will. Normal practice, as I understand it, in various businesses, not just the insurance business, is that when it is advisable as indicated by legal counsel—in many cases on the application a preference is indicated as to whether it is English or French, and certainly for good business practice it would only make sense, for example, if you were in a heavily populated French area, to send it out in both.

I suspect that as a normal course of good business practice the company at this juncture will make the determination. Mr Kormos, if you are suggesting that we should compel all insurance companies to send to all 6.2 million insureds in Ontario all documentation in English and French, that is something we can consider, but admittedly it is not something that we demand at this point in time.

Mr Kormos: You talk about common sense. Common sense has not prevailed in this province in many instances and certainly not in the recent past, and you are telling us that this decision will be up to the respective insurer. They cannot be trusted.

Mr Ferraro: Let me interject that if there is a specific request for it to be in French, it will be made available.

Mr Kormos: A specific request by whom?

Mr Ferraro: At the present time if the insured says, “I would like my correspondence to be in French if at all possible,” then obviously it would be a good business decision on the part of the insurance company to do so, to accommodate the first-party request, which again is another positive side to this bill, to accommodate that request.

Mr Kormos: They have demonstrated, and the government people have acknowledged and cited Osborne talking about the fact that this first-party-insurer relationship with its client has never been a healthy, pleasant one to begin with and there is nothing about this legislation that is going to make it change. Indeed the government recognizes that because the government purports to have coercive sections in its bill that force, according to the government, the first-party insurer to do things, because contrary to what you are saying right now the government knows they are not going to voluntarily do these things, that they have to be coerced into it. If you did not believe you had to be coerced into it, you would not include those sanctions that you brag about at every opportunity.

Tell me this: Are you going to create amendments that will do this: that if an insured indicates to his or her insurer that he prefers the French language, if that insured does not get a notice pursuant to what will be section 208a, will that notice be ineffective?

Mr Ferraro: I am sorry Mr Kormos; forgive me. Could you repeat the gist of your question?

Mr Kormos: This is like trying to chew gum and pedal a bike at the same time.

Are you saying that you are going to move amendments to the bill that if an insured person has indicated to his or her insurer that he or she prefers correspondence be in the French language, that if the notice pursuant to what will be 208a is not delivered in the French language, then that notice will be of no effect?

Mr Ferraro: No, I am not saying that.

Mr Kormos: Why not? Is it all going to be in the good hands of Allstate?

Mr Ferraro: What I am saying is that all documentation would be available pertaining to statutes, pertaining to the policy and contracts in both official languages and the insurance commission itself will be totally bilingual or will have French-language services available. If there is confusion, there will be a toll-free number and the explanation will be given in both official languages.

It is common business practice where companies deem it advisable to provide the service to the first party, to the insureds. It only makes good business sense for them to correspond, in the case of a French-speaking household that wishes to correspond in that language, in French. If people cannot get the information they require, then I would be surprised. If you are suggesting as a solution that we compel insurance companies to provide all correspondence in both languages to all insureds, then say it.

Mr Kormos: No. You know that is not what I am saying. I am talking about section 208 and the notice provisions. Now quit waffling here. No bloody wonder people across Ontario are concerned about this government's approach to French-language services because you sit here and you will not address something so significant—“No, that's all correspondence”—as this very important notice. This notice requirement has some really important and significant repercussions on an insured person. We are not talking about correspondence. We are talking about a notice provision that you take so seriously as to want to amend it today to make

sure it is going to be applicable, to make sure that it is going to be enforceable.

Now get off it. Is the government interested in ensuring that people whose first language is French are going to get this notice in French or is the government not interested in ensuring that is happening?

Mr Ferraro: We believe quite frankly that everything is in place to facilitate that communication. What you are talking about is a situation where someone gets a notice that the insurance company is terminating his insurance and neither his broker—which in the case of the broker he deals with probably in the language of his choice—notifies him, nor the insurance company in the case of a direct rider, assuming good business acumen is in place, does not correspond to him in the language of communication they had when they first took the contract on.

In those very rare circumstances where that person would not be informed, you are making the assumption that not only would he not be informed, in which case we are saying the insurance is still in effect, but essentially that he is not informed in the official language, notwithstanding the fact that in all probability when they took the contract on, it was in that official language and I am sure it would be documented. You are suggesting some statutory provision that would compel insurance companies in those very rare circumstances to make sure that they gave that notice in that language. I suggest to you, in my personal view, that is not necessary.

1050

Mr Sterling: I think Mr Kormos is correct in charging the present problems that the Liberal government faces on the whole French language issue is from your reluctance to deal with specific issues providing a specific resolution of those problems and trying to paint a broad brush across Ontario in dealing with providing francophone services or French services to those who require them in our province. When you paint broad brushes, you hit communities of people who do not want that service, who are offended by that service and who object to the expense of that service.

I think what Mr Kormos is asking for is reasonable, in terms of saying that if a very important notice comes to a client, an insured, who has indicated to his insurance company that he would like to be communicated with in French, then I see no problem with putting a burden upon the insurance company to provide that notice in French. I would support any

amendment that he put forward, and I believe my party would as well.

I believe in dealing very directly with individual issues and providing francophone services in a reasonable and logical fashion. That is where our party has stood all along. We very, very much oppose the broad-brush approach, or I oppose the broad-brush approach in terms of dealing with this whole issue. That is why you have caused so much conflict in this province over the last five years on this issue.

Mr Ferraro: Mr Chairman, I can appreciate the opposition party's motives, quite frankly, in trying to distance itself from a unanimous decision of this province to deal with the French language issue.

Mr Kormos: Horse crap.

Mr Ferraro: Having said all that, let me just say without procrastinating, let me get back to the committee if I can this afternoon vis-à-vis that specific request.

Mr Sterling: Mr Kormos is kindly constructive—

Mr Ferraro: I appreciate that.

Mr Sterling: —and you throw it back in terms of the political motives.

Mr Ferraro: No, no.

Mr Kormos: That is a deliberate falsehood that you just uttered. You have no foundation for saying that. That is the most repugnant type of lie and your behaviour is really offensive in that regard. You have some real disdain, obviously, for French-speaking people here in the province of Ontario. You will not even consider the simplest sort of things to ensure that those very persons to whom the French language is important and significant have some very basic rights under something so important as the insurance coverage for their motor vehicles.

Mr Ferraro: Mr Kormos, you could not be further from the truth.

Mr Kormos: Then show us; show us.

Mr Ferraro: If my behaviour is somewhat antagonistic here, I regret that because, quite frankly, the example I have seen in recent weeks has not necessarily confirmed the approach that I should be taking behaviour-wise.

Mr Kormos: I did not call you antagonistic. I called it repugnant. I am quite prepared to be antagonistic. Your attitude towards French language people is repugnant and I suspect that reflects the real attitude of this government. Talk about trying to flee from an issue. You guys are

trying to flee from this issue. You will not confront the issue, you will not do it.

Mr Ferraro: If I can be helpful, Mr Chairman, can I get back to the committee on that particular issue this afternoon?

The Chair: I suggest that we stand down section 208a until we have some further clarification from the parliamentary assistant.

Mr Sterling: Could I ask a question before we agree to stand down section 208a? What is required in the notice? I see that you have to have notice. Can you help me out? I just was reading through this section. Does the insurer have to provide the reason? It seems logical to me but I do not read it anywhere. Perhaps you can help me.

Mr Nigro: I think the intention of effecting notice to the insured is merely to tell the insured in writing that the insurer's intention or proposal is not to renew the contract or to renew the contract on varied terms. The section is really only drafted to allow an insured to shop the marketplace if his or her insurer is not going to renew. So the notice merely goes to the fact that the contract will not be renewed or will be renewed on varied terms. That is all that is going to be in the notice. It is not an approved notice and there is not going to be, to my knowledge, a prescribed form.

Mr Sterling: The section that we just received not half an hour ago, section 208c, deals with what the insurer has to do to satisfy the commission with regard to terminating the contract. He has to provide a list. So it appears what you are doing is limiting the insurer to only being able to refuse to renew a contract in certain circumstances. Is that correct?

Mr Nigro: The intention is where the government on a general basis passes regulations dealing with a failure to renew a contract in auto insurance, that we may pass regulations that deal with prohibitions. The power spelled out in the amendment that you received this morning deals with the ability of the commissioner to examine the grounds or the list of grounds on which a contract is not renewed or is terminated—I do not have the language immediately in front of me. In any event, that power is consistent with the power of the commissioner in his or her duties in regulating rates and classifications under the approval system established in this legislation.

Mr Sterling: What I am trying to follow through—

Mr Nigro: What I am saying—I do not mean to cut you off, sir—is that we are really dealing with

two discrete or separate issues there. One is a notice to the insured if the contract is not going to be renewed or is only renewed on varied terms in order to permit the insured to shop the marketplace if that is going to be required.

The amendment that you received this morning provides a complementary power to the commissioner in examining rates and classifications to also consider reasons for declining to write a contract. It is part of a package of amendments that deal with it. You look at section 208b that deals with the ability of the government to look at those issues if it so desires.

Mr Sterling: We are getting closer and closer to the line of a government-run automobile insurance plan here. If you require an insurance company to give notice that it is going to terminate a contract, I do not find a great deal of problem with that in terms of a privately run scheme. But once you start to delve into the problem of setting out specifically why an insurance company can or cannot, pretty soon you are going to be across the line where there is nothing left for the insurance companies to do but process the premiums and pay out the standard benefits. What is left for them to do? Where does it all end?

At any rate, it seems that you are allowing an insurance company to send out a notice to an insured. I get it in the mail and it says, "Mr Sterling, we are not going to insure you," and this comes 30 days before, period. Presumably the powers given in this amending section permit me to go to the commission and ask why or on what grounds.

Mr Nigro: The commissioner under the amended subsection 208c(4) has the power to hold a hearing at any time. It is a very broad power if he or she is of the opinion that the ground or the manner in which it is applied is—and there are criteria spelled out there. For example, if you as a consumer were concerned that the reason you were dropped was for some subjective reason that dealt with the criteria spelled out or you felt that you were somehow being deprived of your insurance for improper behaviour, you would really complain to the commissioner. The commissioner would consider it, and I think that he or she does have the discretion to hold a hearing on that kind of behaviour.

Mr Sterling: Yes, but what if you do not get the reason in the notice, what is section 208c all about? Would it not make more sense, if you were going to cut off somebody's insurance, to say, "We are cutting you off because "You are a

high-risk driver," or whatever other objective reasons there might be for cutting off a particular individual? Normally you notice in any kind of quasi-legal proceeding, which you are heading into with section 208c, it puts some onus on the person who is taking action to outline the reasons for what he is doing.

1100

Mr Nigro: You will notice section 208c does require the commission to spell out some reasons why a hearing might be held, so in fact there is that obligation.

Mr Sterling: But I am getting a notice which just says I am cut off. I do not know anything from anybody in terms of this legislation that I can go to the commission and press to get the reasons from the insurance company.

Mr Ferraro: Could I interject? I hope it will be helpful, Mr Sterling. The government motion, section 47 amendment, grounds to terminate, section 208c, which you have a copy of, sir, may clarify it to some degree.

Mr Sterling: That is what I have been talking about.

Mr Ferraro: I realize that is what you are talking about.

Mr Sterling: But what I am saying is you get a notice in the mail from the insurance company cutting off your insurance. Section 208a does not require the insurance company to give the reason.

Mr Ferraro: I see.

Mr Sterling: It just says, "You are cut off."

Mr Kormos: Which means you go into Facility. Let's cut the crap.

Mr Sterling: Or whatever. But the problem is, how do I fight it when I do not know what grounds they are cutting me off on?

Mr Ferraro: I see.

Mr Sterling: So all you do is set up conflict within the system with the insured who then is after his broker who has to go back to the insurance company, and you are into the hassle. Why would you not say, "You are cut off because you are too high-risk," or "You are cut off because you got three speeding tickets," or "You are cut off because—" I do not know?

Mr Ferraro: "Because we are getting out the insurance business."

Mr Sterling: Yes.

The Chair: I was just wondering if the staff could possibly take that as notice and see if we could—

Mr Sterling: That is why I brought it up.

The Chair: —draft something, because we have already agreed to stand this down.

Mr Ferraro: I think you are exactly right. It is a good point that we can address, hopefully.

Mr Kormos: I want to add to that, because the reality is that by and large when you are not renewed by your insurer, it is not a matter of shopping around for another insurance company. It is a matter of going into Facility. That is the experience and there is nothing in this legislation, there is nothing in what is happening across Ontario today, that is going to change that reality. When you are not renewed, you are highly unlikely to find another regular insurer to insure you. It means going into Facility.

So it is not so much a matter of shopping around. It is a matter of going to your bank manager and getting a second mortgage, if you are fortunate enough to own a house, to pay the Facility rates which are \$2,000, \$3,000, \$4,000 and higher.

We have told the minister and the superintendent of so many occasions of people being anecdotally, not formally but anecdotally, told by their broker that the reason they are being dropped is because of, let's say, an accident. Indeed, those people were acquitted in provincial offences court of careless driving, following too close, failing to yield, what have you, and they do not have recourse. They do not have an opportunity to tell the insurer: "No, you are wrong. You used bad information or you were premature in jumping to your conclusion."

It is precisely for that reason, and because of the serious consequences of nonrenewal, that Mr Sterling's points are, oh, so valid. What you have done is create a right without a remedy here. Say so now, because if the only purpose of the notice is so that people can shop around, if that is the only purpose, then say so.

Mr Sterling: You do not really need to—

Mr Kormos: Then you do not have to carry on. But if it really is to be part of a system, a structure, a process, then surely there has to be more. Let's face it. If your only reason is so that people can shop around, the reality of that is not very likely. There is no shopping around. It is called going to Facility and serving your time there until you get released for good behaviour. It is called serving your time with ultrahigh premium rates, which make any suggestion of controls on premiums absurd because you are talking about people who, in many cases, are

good drivers paying \$3,000, \$4,000 or \$5,000. Incredible.

Mr Ferraro: I just want to say that I think it is a good point. I guess I would disagree with you. We think part of the remedy is Bill 68, but I think it is a valid point and we will certainly get back to the committee, hopefully this afternoon, in that regard.

But I think I also must put on the record that, in most cases—certainly ones that have come into my constituency office—where insurance companies in the past have served notice of termination, a reason is usually given. Usually, I think I have to put that on the record.

Mr Kormos: It is the boiler-plate. No specificity.

Mr Ferraro: In most cases where there is no reason, I think Mr Sterling's point is very valid and we will try to address that this afternoon.

Mr Philip: I agree with both Mr Sterling and Mr Kormos.

The Chair: That is a relief.

Mr Philip: I guess one of the things that I run into is not only that they are not informed, but when they finally do get the information or I write to the insurance company and say, "Why are you cutting this guy off, my constituent?" often it is on grounds that are not yet proven in court. So one of the things you may want to consider is if it is worth while saying that you cannot be cut off prior to your day in court. I think that is important.

Let me give you an example. I had a case recently of a fellow who has lost his insurance on the ground that he had left the scene of an accident. The reason he left the scene of an accident was that he and his wife were in pain. The car that hit them from behind left the scene of the accident. They waited an hour for the police and they thought it just might be in the interest of their own health, considering that they might have a concussion, that they should leave and go to the hospital. They got charged with leaving the scene of the crime.

You do not need to be a lawyer to know that kind of circumstance is enough to get you off in court. The police officer in fact told them that there was nothing they could do about it and to simply pay the fine. Six months later, they have the problem that their insurance is cut off for what they thought was a minor violation similar to a parking fine.

It seems to me then that the consumers have to be informed what are the grounds that are going to be allowed by this government for an

insurance company to really cut off your insurance. That is where clause 208c(4)(c) comes in, but it has to be spelled out fairly clearly to the consumer—clause (c) of the amendment, I am talking about.

The other thing I think you have to look at is, I may be wrong but I do not see anything in here that says that insurance will be automatically reinstated in the event that the insurance company fails to notify the insured that the insurance is not going to be renewed. What happens then if he does not get a notice?

Interjection.

Mr Philip: Okay. I am sorry. I missed that. I apologize.

The Chair: I was just going to say there were some new amendments put forward by the government, section 208c.

Mr Philip: I do not know how you talk about it without talking about all of it together.

The Chair: Okay. We have just had agreement to stand down section 208a. We could have discussion on sections 208b and 208c, then if we have to, I am sure we will come back, depending on what amendments may be coming forward.

Mr Philip: Let me make one last point that may be addressed by Mr Nixon or by whoever else wants to deal with it. If there is going to be, as you are suggesting and you are looking at, the need to advise a person in his own preference of the two official languages of the fact that he is not going to have his policy renewed and what are the reasons, then in the event that the amendment passes, will the hearing also be in either of the official languages? If you are looking at the notice in French and English, will there be a hearing in French or English?

Mr Ferraro: Yes, there will be. Both official language services will be provided.

Mr Philip: Because this is a quasi-judicial body, then it will be similar to the courts?

Mr Ferraro: Yes.

1110

The Chair: Can we move on to section 208b of the act? Any discussion on section 208b?

Mr Kormos: This is the one, as I recall, that the parliamentary assistant, Mr Ferraro, asked to have basically held down, and now I see an amendment, section 208c.

Mr Ferraro: I think we referred—correct me if I am wrong—to section 208 in its entirety, to be held down for today until such time as we got the amendment.

The Chair: Let's deal with section 208b and then move on to section 208c. We have stood down section 208a. We can come back to that and do section 208 in its entirety once we have done that.

Mr Sterling: I think you should step down those whole three sections because they interplay with each other. I think we have to get some direction as to which way the parliamentary assistant pulls on this.

Mr Ferraro: I think that is fair.

The Chair: Okay; fair enough.

Mr J. B. Nixon: On a point of order, Mr Chairman: Can I take it as given that everyone has notice of the proposed amendment, section 208c?

The Chair: Just handed out this morning?

Mr J. B. Nixon: Notice; that is all I am saying.

Mr Philip: Why do you not just read it into the record and then it is there?

Mr J. B. Nixon: Into the record? Yes, okay. Just so it is on the table.

Mr Philip: Why do you not put it on the table for now?

The Chair: Then we will stand it down; good enough.

Mr Philip: Then stand it down and set the whole package aside.

The Chair: Mr Nixon moves that section 47 of the bill be amended by adding the following section:

"208c(1) Every insurer shall file with the commission a list of the grounds for which the insurer declines to issue, terminates or refuses to renew a contract.

"(2) The commissioner may require insurers, agents and brokers to provide such information, material and evidence as the commissioner considers necessary to determine the manner in which any ground is applied by the insurer.

"(3) An insurer shall not decline to issue, terminate or refuse to renew a contract except on a ground set out in the list filed with the commission.

"(4) The commissioner may order, at any time, a hearing with respect to any ground set out in the list filed with the commission if the commissioner is of the opinion that the ground or the manner in which it is applied,

"(a) is subjective;

"(b) is arbitrary;

"(c) bears little or no relationship to the risk to be borne by the insurer in respect of an insured; or
 "(d) is contrary to public policy.

"(5) Following a hearing with respect to a ground, the commissioner,

"(a) may prohibit an insurer from declining to issue, terminating or refusing to renew any contract on that ground; or

"(b) may prohibit an insurer from applying that ground, in the manner specified by the commissioner, to decline to issue, terminate or refuse to renew any contract."

Mr J. B. Nixon: Essentially, as it is set out in the notice of motion, it is a new provision that gives the commissioner of insurance power to hold a hearing, and after the hearing prohibit the use by an insurance company of an underwriting principle or ground as a specific basis for terminating or refusing to write when an abuse comes to the attention of the commission. It is a complementary power to the existing powers of the commissioner to approve rates and classes of risk exposure on a company-specific basis.

The Chair: Can we just simply have it read, and then if we are going to get to discussion we will come back when we deal with section 208 later?

Mr Philip: May I ask a question that might be looked into so that when we come back they may have an answer?

The Chair: Sure.

Mr Philip: All regulations have to be passed by cabinet and later reviewed by the standing committee on regulations and whatever else the committee is called. One of the criteria is, does it comply with the Canadian Charter of Rights and Freedoms. My question is this, is the list of grounds on which the insurance can be cancelled, which has to be tabled under a regulation, therefore subject to the procedure of scrutiny of regulations and therefore subject to the same criteria and scrutiny as a regulation? In other words, will each of the criteria tabled by the insurance companies be subject to scrutiny as to whether or not they comply with the Canadian Charter of Rights?

Mr J. B. Nixon: I would think it would be Ontario Human Rights Code, but legal counsel probably knows better.

Mr Ferraro: Mr Nigro, can you respond to that?

Mr Nigro: The regulations made pursuant to section 208b would be subject to the scrutiny, Mr Philip, that you have already outlined. Mr Nixon is correct that there would be a matter of contract

between an insured and an insurer and the Ontario Human Rights Code would have to be complied with. The Ministry of the Attorney General, as a matter of course, in reviewing any regulations does consider charter issues. I am not sure if I see a charter issue here. I do see potentially Human Rights Code issues, but they would be subject to that scrutiny.

Mr Philip: My point is that the regulation, and this would be a regulation that would be—it is part of the bill, so it is part of the act, but as you start fleshing it out, then it becomes under clause 4(c) of the amendment—you flesh it out, the grounds and so forth that you are going to look at, then it becomes by regulation. The regulation is subject to scrutiny under the Charter of Rights. Is the information filed under that regulation similarly subject to a review vis-à-vis the Charter of Rights?

Mr Nigro: I want to spell out what would exist under section 208a, and I am not sure what will be done over the noon hour with section 208a, but the notice there is not a prescribed notice. We may change that. The parliamentary assistant will provide us with instructions on that, but that will not be prescribed. What will be prescribed, if required, is that the insurer not decline to issue or terminate or refuse to renew a contract on grounds. That would be subject to the regulatory regime and the scrutiny that all regulations go through in this province at the level, first, with the Ministry of the Attorney General and the registrar of regulations, the regulations committee, and then ultimately after it is passed by the regulations committee of the Legislature. But the notice under section 208a is not meant to be a prescribed notice.

Mr Philip: Then are the grounds under section 208 prescribed under regulation? No, and therefore not subject.

Mr Nigro: Which section 208?

Mr Philip: I am talking about section 208c. This is what I have been talking about all along. You have been talking about the notice and I am talking about the business of them tabling: "Here are the grounds whereby Brad Nixon is going to lose his insurance. He has X number of violations." His car seat is what he is talking about, all right? I would not want you to think he was out of order.

Mr J. B. Nixon: I would never think that.

Mr Philip: It would be too much of a surprise for this early in the morning.

When they give you the reasons, are they subject to the same scrutiny as the regulations themselves will be? I get negative nods.

Mr Ferraro: Could I have Ms Parrish respond.

Ms Parrish: I think there are two provisions that deal with control over underwriting. There is section 208b, which allows the government to pass a regulation that says, for example, "You cannot refuse to renew someone solely on the grounds that they made a comprehensive claim," which is a not-at-fault claim. So you can have a regulation that would say that. That regulation would be subject to the full regulatory approval system, including an ex post facto review by the regulations committee of the Legislature.

The proposed amendment, section 208c, is essentially a case-by-case or company-specific regulatory weapon similar to the approval of rates on a company-specific basis. In other words, you may have a situation in which certain practices are widespread in the industry and you wish to simply prohibit them on a general basis. "No company should do this." Then you do section 208b.

Mr Philip: Okay.

1120

Ms Parrish: You may have a situation in which a company in the course of the regulatory process has a complaint, or in the course of investigating the insurance commissioner, or his staff most likely, discover a specific problem with a specific company. The proposed amendment gives them the power to go in and have a hearing on the practices of that company and to issue an order saying that the Colleen Parrish Insurance Co. should quit doing X, because it is subjective or arbitrary or bears no relationship or is contrary to public policy.

The government has two approaches. One is the regulation, and the second is the individual regulatory intervention in cases of specific abuse. These hearings would be subject to the Statutory Powers Procedure Act, so unless there was a reason to have it in camera, because of the personal privacy of the individuals involved or whatever, it would be public and people could make representations in the normal course. So there are two ways of dealing with the same problem. It extends the ability of the government to deal not only with general problems that may occur, but also with very specific companies that may be doing something that seems inappropriate.

Mr Philip: So section 208c is probably the feeder in the long run for expansion to section 208b.

Ms Parrish: I think that is a good point, sir, that if you see a lot of section 208c hearings on a specific issue, it may be appropriate to move to a regulation of general application.

Mr Sterling: Section 208c is therefore not really intended for an individual claim or concern. It is a conglomeration of concerns about one company. Is that right?

Ms Parrish: It could be as a result of a specific complaint. It could be generated by a specific complaint. I, Colleen Parrish, had my insurance terminated because I made a copy of the claim. But it is not dependent on a complaint. The companies have to file their underwriting rules, and in the course of looking at the underwriting rules the regulators may find that there is an underwriting rule which is arbitrary—no people with blue eyes—and they might simply say, “Look, we are going to have a hearing on this and decide whether or not you could write a criterion like that.”

Section 48:

The Chair: On section 48, dealing with section 209 on page 26, I believe there is an amendment.

Mr J. B. Nixon: I am just trying to catch up with you. You are moving so quickly.

The Chair: Mr Nixon moves that subsection 209(1a) of the Insurance Act, as set out in subsection 48(1) of the bill, be struck out and the following substituted:

“(1a) A lack of consent does not invalidate such no-fault benefits as are set out in the no-fault benefits schedule.”

Mr J. B. Nixon: The purpose of the amendment is to reinforce the policy objective that all persons injured in automobile accidents are entitled to some level of accident benefits. Without this amendment, occupants of a vehicle being driven without consent would not be entitled to no-fault benefits if they knew or ought to have known that the vehicle was being driven without consent. With this amendment the passenger can receive medical and rehabilitation benefits, but not income replacement benefits, and are in the same situation as drivers who drive a vehicle without consent.

Mr Sterling: Does this mean that a fellow who steals a car and causes an accident is entitled to benefits?

Mr Ferraro: Everything except the income replacement. You are right. He is entitled to the no-fault benefits.

The Chair: Would occupants in the car be entitled? Take that one step further. If the driver

stole the car, picked up some of his friends who did not know the car was stolen and they were injured in a car accident, would everyone except for the driver be eligible for income replacement?

Mr Ferraro: The justification is that if it can be determined that the passengers knew that it was a stolen car, they would be eligible for no-fault benefits, all of them, save and except the income replacement benefit. If they did not know, then they would be eligible for the income replacement benefit as well.

Mr Sterling: This is the craziest thing I ever heard. You mean to say that if somebody steals a car and cracks it up, somehow the fellow's insurance company has to pay for that?

The Chair: Not the insurance.

Mr Sterling: Who is paying?

The Chair: I would think the insurance of the person who stole the car.

Mr Sterling: He may not be insured.

Mr Ferraro: If they have insurance.

The Chair: If they have insurance.

Mr Ferraro: You are right. If that individual does not have insurance—

Mr Sterling: This has to be the most ludicrous thing I have ever heard in my life, that you are going to give a criminal compensation when he cracks up a car. I have never heard anything so silly in my life.

Mr J. B. Nixon: Well, now, wait a second.

The Chair: Let me just ask a question in terms of what happens now.

Mr J. B. Nixon: That is what my question was.

The Chair: Oh, that was going to be your question.

Mr Nigro: Just for the committee's information, I do not have an exhaustive review of the case law, but there was a case this past summer where the widow of a car thief received the death benefits under the accident benefit regulations now.

Mr J. B. Nixon: That is right.

I was going to say to Mr Sterling—it has obviously been confirmed—that it is my understanding that this is the state of the common law now, and what is being provided here, as I understand it, are just the medical and rehabilitation benefits, not the loss of income benefits, which is consistent with the common law.

Mr Ferraro: And death benefits.

Mr Sterling: So in effect they would get what under this?

Mr Ferraro: A \$25,000 benefit.

Mr Sterling: It is \$25,000.

Mr J. B. Nixon: That is the way it is now.

Mr Sterling: Where would it come from, if somebody stole my car?

Mr Ferraro: If that individual has insurance, if the thief has insurance, it would come from the thief's insurance company. If he or she does not, then it would come from the insurance company pursuant to that car.

Mr Sterling: My insurance company?

Mr Ferraro: Yes.

Mr Philip: And if the full-time occupation is stealing cars, the rehabilitation is we get them back to work.

The Chair: Quite possibly.

Mr Ferraro: It would not affect your premium, Mr Sterling.

Mr Sterling: I do not care if it affects my premium.

Mr Ferraro: I realize that.

Mr Sterling: It does affect my premium. It affects everybody's premium.

The Chair: Are you ready for the question on the amendment? Same vote?

Mr Sterling: What is the same vote?

The Chair: Basically six to four, if we go on the same vote as yesterday, unless you want a recorded vote and we start over today. Is that what we have to do? The clerk says we have to do that. Having said that, Mr Philip, do you want time to get Mr Kormos so that we can use that or do you want to wait till he is here the next time?

Mr Ferraro: Can we not, by unanimous agreement, just agree to the same vote?

The Chair: According to the clerk, we are on shaky ground.

Mr Ferraro: If the committee unanimously agrees, it can do it. Is that not correct?

Clerk of the Committee: Mr Chairman, a vote is for the members to be here. If he is not here, one cannot assume he does not wish to vote or he is abstaining from a vote.

The Chair: Okay. So I am going to take a recorded vote.

Interjection.

The Chair: A voice vote? Okay. Shall the amendment carry? Okay, the amendment carries.

The Chair: On the amended section 48, shall section 48, as amended, carry? Carried.

Mr Philip: I think Mr Kormos wanted a recorded vote on most of these, so maybe we should go back to the other system.

The Chair: Okay. Do you want a recess to find him?

Mr Philip: I just have trouble voting against standard legal decisions that have recently come down; that is all. No, I can assure you that is what he wants, and he is the critic.

The Chair: Do you want a five-minute recess?

Mr Philip: No, just take yesterday's vote.

Mr Sterling: You have to vote.

The Chair: Yes. So I am going to have to recess.

Mr Philip: I can vote against this and you can take the vote now, if you want, or I can try to get Mr Kormos, whatever.

The Chair: It is your choice, Mr Philip. You can ask for a recess.

Mr Philip: Okay. I will take a five-minute recess. He is probably just outside.

The committee recessed at 1130.

1147

The Chair: We will recognize a quorum and call for a recorded vote on the amended section 48.

Mr Sterling: Sorry. Just before you do that, can somebody explain to me what this amendment does to section 48?

Mr Kormos: I would like to hear that too.

Mr Ferraro: Does that mean subsection 48(1)?

Mr Sterling: Yes.

Mr J. B. Nixon: Do you want me to read the rationale?

The Chair: Please.

Mr Ferraro: That might be the easiest way.

Mr J. B. Nixon: Is that what you want me to do?

Mr Ferraro: That is the one we discussed about a thief who steals a car and whether or not he would be entitled to income replacement or, indeed, whether or not the passengers are aware of the fact that he or she stole the car, whether they would be entitled to benefits.

1150

Mr Kormos: What is the answer?

Mr Ferraro: The thief would be not entitled to income replacement, but as is the case, as I understand it in the present circumstances, the thief would be entitled to the no-fault benefits. In the case of passengers in a stolen car, it is very

similar, in fact identical as I understand it, to the present situation in common law that, if indeed, the passengers knew the car was stolen they would be entitled to the no-fault benefits except the income replacement. If they did not know the car was stolen they would be entitled to all the no-fault benefits.

Mr Kormos: Wait a minute. It is incredible, is it not?

Mr Sterling: Who is going to say that they knew the car was stolen?

Mr Ferraro: I agree with you.

Mr Sterling: This is crazy.

Mr Ferraro: But this is the present situation as I understand it under the current law.

Mr Sterling: Let's change the law so that it makes some sense. We are changing the law now in terms of what insurance is all about. Let us codify it.

Mr Kormos: One moment, please. How does this amendment deprive the thief of income replacement?

Mr Abols: Perhaps I can answer that question. It says you are entitled to the benefits as set out in the no-fault benefits schedule. That is the regulation, and in the regulation it says the thief does not get income replacement benefits. He gets everything but income replacement benefits.

Mr Kormos: Would you refer us to the section?

Mr Abols: I will read what we have with the current draft of the regulations.

Mr Sterling: The government can and will change this in the future. We could see a crook not only get rehabilitation and his estate get \$25,000 if he is killed, but we could see a future government or this government change the regulations and say he is entitled to income replacement at \$450 per week.

Mr Kormos: No. It would be a mere \$185, because he is inevitably unemployed.

Mr Ferraro: The other argument, Mr Sterling, and I am sure you know them all, is that if you have a 16-year-old steal a car and he is with four other 16-year-olds or 15-year-olds, and they know they stole the car and they get in an accident, surely to God, in this day and age—and I think that is quite frankly the understanding of the previous governments—that individual obviously made a mistake, but I do not think as a compassionate society we want to deprive those individuals of rehabilitation and supplementary medical care.

Mr Kormos: They used to get the rehabilitation as well.

Mr Ferraro: I cannot believe that you would condone that.

Mr Sterling: I would.

Mr Ferraro: In my view, I think that would be totally inhuman.

Mr Sterling: I believe people have a choice in this world, and those who choose to break the law suffer the consequences.

Mr Ferraro: I think it is a philosophical argument that we could debate, I am sure.

The Chair: Shall section—

Mr Sterling: No, no. Wait.

Mr Abols: Just for Mr Kormos, I was to read the draft. It reads currently, and this is the section titled exclusions, "An insurer is not required to pay benefits under this part"—and this part is the income replacement part—"in respect of the driver of the automobile at the time of the accident"—and then in (f) you go down—"if the driver knew or ought reasonably to have known that he or she was operating a motor vehicle at the time of the accident without the owner's consent." So the thief obviously would not have had the owner's consent.

Mr Kormos: Now wait a minute. What Mr Ferraro is talking about is parties to an offence. Terrance and the Queen was the Supreme Court of Canada decision. How can Mr Ferraro say that persons in the vehicle who knew the vehicle was stolen can be deemed to be included in that exclusion? It specifically says "the driver."

Mr Abols: Yes, that is right.

Mr Kormos: Not passengers of a stolen vehicle, but the driver. So, indeed, passengers who know that the vehicle is stolen may be culpable at criminal law, but certainly a passenger who helped steal the car and who then passed control, drivership, over to his or her cohort would be covered for income replacement.

Mr Abols: This is a draft no-fault benefit regulation. It is still under the process of revision. That is the policy intent that we are going to have reflected in here.

Mr Kormos: What gives here? How come you are asking this committee to consider legislation when all you have got is maybes in terms of regulations? Now, are those the regs or not?

Mr Abols: Excuse me, Mr Kormos, it is not a maybe. It is an omission in the drafting. It is supposed to be here. That is going to be in here.

Mr Kormos: How is it going to be? How could you tell us that not only would drivers of a stolen car, but knowing passengers of a stolen car, were to be considered? How could you tell us that when that is not the case?

Mr Ferraro: Because the intent of the policy is to reflect that and, indeed, it will be reflected in the regulations.

Mr Kormos: But how? Say what you mean the regs to say.

Mr Ferraro: You asked the question, Mr Kormos. I gave you an answer.

Mr Kormos: What are the regs going to say to give effect to your intent?

Mr Abols: Subject to legislative counsel's direction on this on the appropriate drafting, we will simply have another exclusion here that will mention the passengers who do have suspicion that the driver does not have consent.

As I say, I have to defer to legislative counsel on the language, but the policy is to place that passenger in the same position as the one who is the driver of the vehicle. That is, they will receive medical and rehabilitation care but they will not receive income replacement because they are accomplices in this situation.

Mr Kormos: Compassion is what this bill is lacking.

Mr Ferraro: That is not what Mr Sterling said.

Mr Kormos: Where is the compassion for the innocent victims? Where is the compassion for the vast majority of innocent injured victims who will not be considered at all for compensation for their pain and suffering and loss of enjoyment of life?

Where is the compassion for the head injury people, for whom the manifestations remain subtle until they reveal themselves 12 months, a year and a half, two years, perhaps even longer, after the fact? Where is the compassion for the people who suffer psychological injuries? You ought to know, if you listen—and one is doubtful about that. One should be very skeptical about whether you have listened at all. You listened to the minister and the insurance industry telling you what to do. You did not listen to the hundreds of submissions that were made before this committee that talked about psychological injury and how debilitating that can be: how that can create lifelong disability for people. We also heard that psychological injury is not dependent on the degree of physical trauma undergone.

You are talking here about creating another one of those. You have already created a scenario

wherein a drunk driver could conceivably be treated better than the victim of that drunk driver, because you talked about how that drunk driver could receive income replacement up to \$450 a week until such point in time as he or she is convicted. We all know, and you as a government member surely ought to know, that with the backlog in the courts it is not hard for a drunk driver to spend a year, a year and a half, two years—and what the heck, in a big chunk of the province's courts the judge may have no option but to dismiss the charge, not on the merits but because the delays were so unreasonable as to violate the Charter of Rights.

So you talk about compassion. Where is the compassion for those folks who appeared before this committee, either in person in their wheelchairs, or represented by their spokespeople? Yes, you have compassion. You have compassion for the drunk driver; you have compassion for the car thief. You display absolutely none for the real victims who really suffer. How can the government not be more careful and cautious in assembling this legislation and, more important, in assembling the amendments? I guess the real question is: What was the original intent, because the amendment is not something that cures a patent defect? The amendment is something that clearly adds to what was there. This is not a difficulty in terms of language or lexicon. This is clearly something that is being added after the fact. Does this amendment reflect the original purpose of the legislation, Mr Ferraro?

The Chair: He asked the question.

Mr Ferraro: I am sorry, Mr Kormos.

1200

The Chair: Does the amendment reflect the original intention of the legislation?

Mr Kormos: Come on, we have only so much time. The government would not permit us any more time. Now come on. You are either going to participate in these hearings or you are not.

The Chair: I was concerned with what finger Mr Ferraro was going to use to show you that he had one minute left, so I thought it was an appropriate time to interject and seek an answer from him and then break for lunch.

Mr Kormos: I should tell you, Mr Chairman, that when Mr Ferraro and I left the committee room the other day there was a group of people in the foyer and they looked at me and they said, "Why, that's that Kormos guy." And they looked at Ferraro and they said, "There's Ferraro, the parliamentary assistant." Rick turned and looked at them. They all raised that middle finger. Rick

turned and smiled at me. He said, "Look, they still think I'm number one."

The Chair: You see, there you go. Mr Ferraro, you have a response.

Mr Ferraro: That is not true, Mr Chairman. They were merely looking to see if in fact Mr Kormos was actually floating above them. Could I have Ms Parrish respond?

The Chair: Please, and then I am going to call the vote.

Mr Kormos: I have more questions of the parliamentary assistant.

The Chair: Not before lunch, we are not.

Ms Parrish: I think I can understand their concern and Mr Sterling's concern about treating persons who are impaired drivers or whatever. On the other hand, I think it is consistent to treat all persons the same. If we do not make this amendment, the person who drives with someone knowing that the car is stolen is treated worse than the actual driver. I do not think that was the original policy intent.

I think what we are saying is that the passengers who knew of the theft or ought reasonably to have known of the theft should be treated the same as the driver who was driving without consent. Obviously, if the passengers do not know at all, they should not be penalized. If they genuinely did not know or could not reasonably have known, they should get the full range of benefits. All this amendment is doing is treating the passengers and the drivers the same, because it would seem sort of illogical to treat the drivers better than the passengers.

Mr Sterling: I just point out that I think you are treating the driver of a stolen vehicle too well, that is all, and I disagree.

Mr Kormos: That does not respond to the question, which is: Does this amendment reflect or generate the original intent, policywise?

Mr Ferraro: This amendment reflects the intent.

Mr Kormos: The original intent?

Mr Ferraro: The intent, the government intent in this area.

Mr Kormos: Okay, is this a newfound intention? Why I ask that is because this was not present in the bill for people who participated in the hearings to comment on, was it?

Ms Parrish: The original section was there.

Mr Kormos: Yes, but not the amendment. "A lack of consent does not invalidate," and that is what is crucial.

Mr Ferraro: That goes without saying. All the amendments were not there for the original delegation to comment on.

Mr Kormos: But is this in response to any of the submissions made to the committee? Is this amendment in response to any of the parties who participated in these hearings?

Mr Ferraro: I cannot say for certain sure, Mr Kormos, but it certainly is a response to the intention of the government.

Mr Kormos: You see, my problem is, why was the intention of the government not reflected in the bill as it was originally printed and presented?

Mr Ferraro: For the same reason that every piece of legislation probably in North America always has amendments to it. Many of it is to rectify typos, legal wording clarifications and, in some cases, lack of clarity and, I suggest to you, sir, for the same reason.

Mr Kormos: This is not a matter of lack of clarity. The subsection that will be subsection 209(1) as set out in the bill's section 48 is quite clear and precise. This amendment makes a major revision. I will tell you, there was not a single submission made before this committee that would prompt the government to respond with this amendment. It is just incredible.

Mr Ferraro: You are making the presumption that every amendment the government makes is in response to a presentation.

Mr Kormos: None of these amendments is in response to presentations. That is the problem.

Mr Ferraro: That is not true. That is factually incorrect.

Mr Kormos: You heard from hundreds of groups who pleaded with you to show a little bit of compassion for them, for victims. You did not respond to a single one of the submissions.

Mr Ferraro: You are just wrong.

Mr Kormos: Name a single submission that you responded to. Name one. Name it.

Mr Ferraro: There is one before you right now dealing with bicycles.

Mr J. B. Nixon: Mr Chairman, I think we have had a pretty thorough discussion on this and I ask that the question be put.

The Chair: Okay.

Mr Kormos: Wait a minute.

The Chair: That is not the only determination, given the fact that we had close to a 15-minute recess to recall members so that they would be here for a recorded vote, so that if individuals

were not going to be here this afternoon we could use the same vote procedure as advised by the clerk. I think we have had enough discussion on the subject. I am going to call for a recorded vote.

Mr Kormos: I can understand why the government would not want to discuss this any more.

The committee divided on Mr Nixon's amendment, which was agreed to on the following vote:

Ayes

LeBourdais, McClelland, Nixon, J. B., Oddie
Munro, Sola, Velshi.

Nays

Kormos, Philip, Sterling.
Section 48, as amended, agreed to.
The committee recessed at 1205.

AFTERNOON SITTING

The committee resumed at 1408 in committee room 2.

The Chair: I am going to call the committee back to order and say that we are on the top of page 27, section 209a. I believe there is an amendment.

Mr J. B. Nixon: We had done that, I thought.

The Chair: No, we have not.

Mr J. B. Nixon: Oh, I am sorry. Yes, okay.

Section 49:

The Chair: Mr Nixon moves that section 209a of the Insurance Act, as set out in section 49 of the bill, be amended by striking out "using or" in the fifth line.

Mr J. B. Nixon: This deals with the "excluded driver" provisions, which are only intended to apply to situations in which the excluded person is driving the automobile in question. The words "using or" unintentionally broaden the application of this provision and could be construed as covering situations where the excluded driver, as a passenger, opens a car door into the path of a bicycle. In such circumstances it was not intended that the insurer escape liability.

Mr Kormos: Where is that amendment? That amendment is in which package of amendments?

The Chair: In the first package.

The Chair: Shall section 209a carry? Carried. Same vote.

Section 49, as amended, agreed to.

Section 50:

The Chair: Shall section 50 carry?

Mr Kormos: Excuse me. What does section 50 mean?

The Chair: What does 50 mean? Could somebody tell us that?

Mr Abols: Section 210 currently in the act deals with just the scope of the coverage of the driver's policy. By adding the words "directly or indirectly" it is meant to address case law which says that, for example, if you are working on your car, or again the situation where the passenger opens the door, you are not covered because you are not actually operating the vehicle as a vehicle. The view is since that is associated with the vehicle, it should be covered on automobile policies. Hence, we have introduced the phrase "directly or indirectly" to broaden the scope of the coverage.

Section 50 agreed to.

Section 51:

The Chair: In anticipating Mr Kormos's question, what does it mean?

Mr Abols: It means the same thing as it meant in the last section.

The Chair: Thank you very much.

Section 51 agreed to.

Section 52:

The Chair: Under section 52, section 217a of the act, you have a question, Mr Kormos?

Mr Kormos: We are getting down to this business of "excluded driver." This obviously requires that we have got to consider 209a, section 49 of the bill, once again. Now, section 49 was amended by eliminating "using or" in the event that the excluded driver opens the door as a passenger. Looking back at 209a, section 49 of the bill, "The insurer is not liable to any person under the contract...for any loss or damage that occurs while the excluded driver is operating an automobile." Some people might read that and take it to mean—it says "is not liable to any person under the contract." Just how many people does this exclude from collecting compensation in virtue of the excluded driver operating the vehicle?

Mr Abols: I will initially speak to it, but my colleague may have something to add to it. A person under the contract would be the named insured and any person deemed to be an insured by virtue of the definition of "insured person" in the no-fault schedule. It excludes those persons to the extent, again, set out in the no-fault benefits schedule. The rationale for the provision my colleague can address if you want.

Mr Kormos: The rationale is fine, except I want to know who is excluded. Let's say Jane Doe, for whatever reason, is excluded from the contract, and she is operating in logical circumstances, the usual ones, that she is living in her household and may or may not have a bad driving record, but in any event the family has got to exclude her to keep their premiums down into the four-digit range.

Interjection.

Mr Kormos: What did you expect me to say? Lower? Down into the four-digit range. What happens then if she is driving the car and who all is not covered as a result of her driving the car?

Mr Abols: Maybe the way to explain it is to look at really what her status is when she is driving the car. Her status is that of an uninsured driver. So if you are hit by her, you are essentially hit by an uninsured driver.

Mr Kormos: So you are SOL?

Mr Abols: SOL? I am sorry.

Mr Ferraro: Sorry, out of luck.

The Chair: We have cleaned up our act lately.

Mr Abols: No, because there is of course the uninsured coverage that is the standard endorsement in most automobile insurance policies by law—I am sorry, in all automobile insurance policies. So if you are an insured person under somebody else's policy or your own policy—that is, the victim who has been hit by this excluded driver—you have coverage under your own policy.

Mr Kormos: What if you are an ecologically conscious urbanite who does not have a driver's licence, does not drive?

Mr Abols: Then you go to the motor vehicle accident claims fund.

Mr Kormos: Holy cow. Wait a minute.

Mr Philip: You are being provocative again.

Mr Kormos: Wait a minute. You go to the motor vehicle accident claims funds. Why, that is paid for by various contributions, little levies against revenues collected by the government, you know, drivers' licences, things like that.

Mr Abols: Yes.

Mr Nigro: In effect, the victim without a policy would be treated as if he had been injured by a driver who had the basic automobile policy.

Mr Kormos: So even if Doe Sr consents to Jane Doe as an excluded driver using the car and—let's create the most clear-cut, black-and-white kind of scenario: Doe Sr is aware of all the consequences. He knows that by virtue of being an excluded driver she cannot even drive in emergencies, she cannot drive somebody to the hospital with his legs dangling by mere sinew, because that is what an excluded driver means, right? Duress is what criminal law considers that, but not this kind of contract civil law. So even if he knowingly does that, the poor SOB—I am into abbreviations this afternoon—who gets mowed down by her has to go after the motor vehicle accident claims fund?

Mr Abols: Unless that person has his own insurance. Assuming that, yes—

Mr Ferraro: No, there are no-fault benefits.

Mr Abols: But the no-fault benefits will be delivered by the motor vehicle accident claims fund.

Mr Nigro: I do not understand your confusion, Mr Kormos, only because I do not know why she would be in any different situation than she would be now.

Mr Kormos: But the car is insured, right?

Mr Nigro: Yes.

Mr Kormos: The car is insured, but you are saying that the unlicensed nondriver who is mowed down by her cannot seek any compensation from the insurer of that motor vehicle.

Mr Ferraro: No.

Mr Abols: Well, just subject to my—

Mr Kormos: Or from the owner of that vehicle who knowingly lets his daughter, who is an excluded driver, drive.

Mr Nigro: I understand that you will get covered by the no-fault benefits under the policy on the vehicle. The vehicle does have a policy. So she would recover there. If she crossed the threshold she would seek recovery from MVAC.

Mr Kormos: What is the ceiling on it?

Mr Nigro: It is a statutory limit, so it is \$200,000.

Mr Kormos: It is a \$200,000 maximum payout under the motor vehicle accident claims fund, and the fact is that not all insurance policies have to be, let us say, \$500,000 in Ontario. Many are even \$1,000,000 now.

Mr Ferraro: That happens now.

Mr Kormos: What do you mean it happens now?

Mr Ferraro: It happens now. If there is no insurance liable, then you have to go to MVAC and the same statutory limitations apply as under the present legislation.

Mr Kormos: But let me put this to you: If I let my 15-year old kid, who is unlicensed and who I know is unlicensed, drive my Chevy pickup, which is licensed, the injured party does not have to go to the motor vehicle accident claims fund.

Mr Nigro: The insurer is absolutely liable, I think.

Mr Kormos: That is right. And if there happens to be no insurance on the vehicle, if I happen to be that negligent, any shortfall could be sought against me personally. Is that not correct?

Mr Nigro: Yes.

Mr Kormos: There is subrogation between the motor vehicle accident claims fund and me.

That is how people lose their licences for long times. Again, nobody is quarrelling with that. But any shortfall, because of the maximum, the ceiling, on the motor vehicle accident claims fund, can be sought against me personally, can it not?

Mr Nigro: Yes.

Mr Ferraro: The maximum as well is the requirement by statute, the provincial legislation. You have to have \$200,000.

Mr Kormos: That is the minimum.

Mr Ferraro: The minimum. I am sorry, yes.

Mr Kormos: That is the maximum under the motor vehicle accident claims fund. This is what I am saying.

Mr Ferraro: That is true. I see. Okay.

Mr Kormos: This is what I am saying. We have created a fact situation that is not unrealistic because we are not talking about stolen cars now, we are talking about excluded drivers.

Mr Nigro: That is right.

1420

Mr Kormos: Most excluded drivers—most of them, not all of them—will be household members, that is to say, persons living in the family home. That is why they have to be named excluded drivers, because by and large the insurance industry will disconsider you if you live more than 2,000 miles away from the family that owns the vehicle. So we are not creating an unrealistic fact situation, but this legislation creates a scenario which is far crueller to the victim than exists now, because now the insurer of the vehicle, regardless of who drives it, is liable, even if it is an underaged, unlicensed driver.

Quite frankly, even if it is a drunk driver, the insurer is liable to the third party. That has been clear for a long time and I believe there is some subrogation there. There are some rights against that drunk driver, at least in theory, notwithstanding that insurers rarely utilize those. But we are talking about a situation now where if there is insurance on the car, the victim is not restricted to a \$200,000 ceiling. Let's discuss this within the context of your onerous, unconscionable threshold for a minute; let's talk about the person who does pass the threshold.

The person who passes the threshold, as you well know, has to be dead or damned close to it. So we are talking about significant injuries, injuries whereby it is not difficult to envision damages in excess of \$200,000. You are forcing that perfectly innocent victim into the motor

vehicle accident claims fund where the maximum payout is \$200,000—in many respects it is public funds; it is out of the public purse by and large—and you are not even giving that victim the right to go beyond that and say, "Wait a minute, the jury awarded \$400,000 by virtue of my becoming a quadriplegic," you are not even letting that person go to the driver who was negligent and say, "You make up the difference." Talk about creating a scenario of real impoverishment. Talk about really victimizing a victim.

Mr Ferraro: Let Ms Parrish respond and clarify.

Ms Parrish: What will happen in the case of an excluded driver is that the excluded driver endorsement really only affects the liability part of the policy. So people will still get their basic no-fault benefits.

Mr Kormos: Yes, \$450 a week.

Ms Parrish: That is more than they get now.

Mr Kormos: No, no, because now they have a right to sue.

Ms Parrish: They will still be able to sue the excluded driver. The problem is that there will not be any insurance. You can still sue this person. In fact that is going to be one of the main reasons why people who are excluded and know they are excluded will not drive, because they can still be sued personally. They will not have insurance but the motor vehicle accident claims fund will give you the same amount of insurance that you require people by law to buy. There are people now who buy \$200,000 worth of insurance, and if you are hit by them, that is all you get because that is what the law of Ontario requires you to buy.

Mr Kormos: What percentage buy only the minimum?

Ms Parrish: It is a relatively small percentage; about half of the people of Ontario buy \$500,000 or \$1 million.

Mr Ferraro: That is right.

Ms Parrish: Notwithstanding, you can still get hit by somebody who has a \$200,000 liability policy, and that is why many people in Ontario buy SEF 44, which protects you against the eventuality that you will be hit. You can still sue that person. We are not saying you cannot sue them. They just may not have anything.

Mr Kormos: If you pass the threshold—

Ms Parrish: Of course, that is the same for everything. You can still sue that person. They may or may not have assets. So to that extent,

you are in the same position as you are when you are hit by any other uninsured motorist.

Mr J. B. Nixon: I just want to lend a sense of history to these discussions and remind all present that this could be labelled the Mel Swart amendment. The previous member for Welland-Thorold has been a long-time advocate of this amendment.

Mr Kormos: Mel Swart was never an advocate of eliminating people's rights to sue. Mel Swart was never an advocate of enhancing the profitability of an insurance company.

Mr J. B. Nixon: Mel Swart was an advocate of no-fault.

Mr Philip: This is not no-fault.

Mr Kormos: This is not what Mel advocated for over 13 years.

The Chair: Thank you for being so very helpful.

Mr Kormos: You clowns have exploited the good record of Mel Swart. You guys have capitalized on a fight that he basically waged alone for so many years by utilizing the title no-fault when you know darned well that this is inappropriately called no-fault, because that is what we have already, and more appropriately called threshold.

Let's find out a little bit about this motor vehicle accident claims fund, because it would appear that as a result of this there is going to be some shifting of cost over to the motor vehicle accident claims fund. In the past unlicensed drivers would be covered by the insurer, so there is going to be—

Mr Ferraro: No, no.

Mr Abols: No, not if you are not licensed. There are exclusions. If you are not qualified for authorized—

Mr Kormos: Third-party, right? Liability still existed.

Ms Parrish: If they were within the household, and you would have to have the appropriate fact circumstances.

Mr Kormos: Okay, but we are talking about creating a new class here, a new group of victims—not to say that they would not have been victims, but they are victims who now have to seek their compensation from the motor vehicle accident claims fund and not from the insurer. Is that correct? Is that correct, Mr Ferraro? If it is not, say so, and if it is, say so.

Mr Ferraro: I am not sure it would be a new class. There was a class in the present system that

would have to claim to the motor vehicle accident claims fund as there is now. There may be.

Mr Kormos: Uninsured drivers. That is a whole new area of discussion. We are going to deal with that, hopefully, before this clause-by-clause is over, and about the ineffectiveness of this legislation in dealing with the uninsured driver, which is a serious problem in the province.

There is the uninsured driver, and there is also the matter, we know, of the absent car, the hit-and-run driver, and people make claims against motor vehicle accident claims fund for that, but now we are talking about an excluded driver, where in the instance of an excluded driver, in the event that there is an accident, the victim will be seeking his or her compensation from the motor vehicle accident claims fund, not from the insurer.

Mr Ferraro: You are right. In the sense that we are creating an excluded-driver provision for insurance companies, and indeed for insured families, which is usually the occasion when you want to have an excluded driver, then you are right, there will conceivably be a greater number of people put into that classification.

Mr Kormos: Where is the source of funding for the motor vehicle accident claims fund?

Mr Ferraro: Various sources of funding.

Mr Kormos: Yes, I know. We started off on that. Which are the various sources of funding?

Mr Ferraro: I will ask Ms Parrish to expound on it to be more precise.

Ms Parrish: There is a levy against the licence and the vehicle. There is a per person or per vehicle levy.

Mr Kormos: The western provinces should have that.

Mr Ferraro: They do already.

Ms Parrish: I think they have gas taxes. There is also investment income, because you may recall at one time people could pay \$50 or \$100 not to have insurance, and that money is still held by the fund. So they have had an ongoing—

Interjection: Unsatisfied judgement fund.

Ms Parrish: From the old unsatisfied judgement fund. But in the old days, before people had to buy insurance by law, they could actually pay money not to have insurance.

Mr Kormos: I remember it well. Now you can just buy pink slips in a tavern. That is what this machine creates. Well, they do. That is what this province has created, a regime where you can buy pink slips in a tavern.

Mr Parrish: There was some money available that came out of that. They still get investment income from that, plus of course the motor vehicle accident claims fund goes against the uninsured drivers and attempts to collect from them. They do get income from that source as well. They go against the driver and they try to get what they can in the way of assets or attach his income in order to repay the fund. Those are the current sources of income for the motor vehicle accident claims fund.

Mr Ferraro: The reality is, Mr Kormos, you would have to acknowledge that there was a significant demand and reason for—at least you would recognize that, from our perspective, there is significant reason for allowing for the exclusion of a particular driver.

Mr Kormos: Sure, and let me tell you this—

Mr Ferraro: These people have to go somewhere.

Mr Kormos: No, no. Let me tell you this. There are a number of ways of doing it. In the event of an excluded driver operating a vehicle, one can then make the owner of the vehicle who maimed that excluded driver and who knowingly let that excluded—because that is the only circumstance we are talking about, right, where the excluded driver knowingly—

Mr Ferraro: Right.

Mr Kormos: Otherwise, you have a scenario like in the previous clause. That is something that is tantamount to car theft, where there was no consent.

Mr Ferraro: Right.

1430

Mr Kormos: So the only time you are talking about is when there is consent, and there are a number of ways of doing it. One of the ways of doing it was to make the claim collectable as against the owner of the vehicle, because what you have got here is no disincentive. Where is the disincentive for the owner of the vehicle, where an excluded driver is named, to not let that excluded driver drive the vehicle?

Mr Nigro: I would say that the disincentive would be in the premiums, and that is what generated this policy, the premium paid by the owner of the vehicle or the head of the household or whoever is paying the dollars on the premium. The notion was to permit a reasonably priced insurance product to be delivered to a household where a member of the household would otherwise result in a much higher premium being charged.

Mr Ferraro: Could I ask for the indulgence of the committee for Ms Parrish to further clarify this issue?

Ms Parrish: We have an excluded driver who drives the vehicle and there is an accident and there is a claim, a tort liability claim, and there are insufficient funds. You can still sue the owner of the vehicle. That is a very significant disincentive. People who have significant assets, for example a home, are not going to exclude a driver, their son or their husband or their wife, unless they are very sure that that person is not going to drive that vehicle. I certainly would not, because the reason I bought my insurance is to protect my assets.

I think that in most cases, people who buy an excluded driver endorsement policy will either be sure that that person is insured elsewhere—either there are two cars in the household and you want to say, “Look, my husband with the bad driving record drives X car and I, the good driving record, drive Y car,” and be very sure, because if I am wrong and if my spouse takes the car and there is a claim, then I lose my house. So I think that there is a lot of incentive for people to be very sure that the excluded driver is not driving that vehicle.

Mr Abols: I would just add that essentially that is the deal you struck with the insurance company, “I, the householder, will make sure that Jane, who has a bad driving record, doesn’t drive it,” knowing that if I do not do that, I am vulnerable, as Ms Parrish has outlined.

Mr Kormos: Except the MVAC fund is something of an anachronism, other than for the hit-and-run driver, other than for the car that cuts you off and then keeps on going. Its validity is unquestionable in that regard, but what is happening here—I have some concerns about its validity as it relates to uninsured drivers.

Mr Ferraro: No, MVAC was also there if there was no insurance present.

Mr Kormos: Uninsured drivers. All right; the same thing. And its origins, quite frankly, are in that, because its origins are in the unsatisfied judgement fund. Its origins were not to protect those people who were hit by the phantom car, who were driven off the road by the phantom car, its origins were basically a crude form of pooling, as has already been spoken of, \$50. Perhaps it is even cheaper than \$50 at some point. As long as I can remember, it was \$50.

Ms Parrish: When I prosecuted these cases, it was \$50.

Mr Kormos: That was a long time ago.

Ms Parrish: Yes, I am old.

Mr Kormos: A child lawyer.

In any event, I am not sure there is that much validity to it when it comes to uninsured vehicles, because what that implies—and you have got a whole lot of uninsured vehicles. Let's talk about that for a minute. What does the government have in mind in terms of dealing with the phenomenon of uninsured vehicles? There is not a single thing in this legislation that protects us against the growing number of uninsured vehicles out there on the highways, or are those extra—ones that are being transferred down from up north?

Mr Ferraro: The other situation is, the government compels people who want to drive to have insurance. If you are suggesting that we compel people to have insurance for cars that they do not drive—

Mr Kormos: What are you talking about?

Mr Ferraro: We were talking about uninsured vehicles.

Mr Kormos: There is a whole pile of them out there on the highways.

Mr Ferraro: In that regard, you either cover it under your no-fault benefits on your insurance or indeed you end up with MVAC.

Mr Kormos: Watch my lips. What is the government doing about the growing number of uninsured vehicles?

Mr Ferraro: I cannot watch your lips, I get dizzy. I was never a fan of Charlie McCarthy. Can you expound on that?

Mr Kormos: Help him, Mr Chairman. He needs all the help he can get.

Mr Philip: There is always sibling rivalry between Mortimer Snerd and Charlie McCarthy.

The Chair: If I understand Mr Kormos correctly, the question is, what is the government doing or contemplating doing about the number of people who choose not to take out insurance but drive anyway?

Mr Ferraro: I will have our legal counsel clue Mr Kormos.

Mr Kormos: That seems to be a policy issue.

Mr Philip: Eat enough grapes and it increases your IQ. You see, there is the proof of it.

The Chair: We have an answer down there.

Mr Abols: Not exactly an answer, but an observation. There is the Compulsory Automobile Insurance Act, which is being enforced, to

the best of my knowledge, and will continue to be enforced.

Mr Kormos: Come on now, that is simplistic and obvious. You know that there is an increase in the number of uninsured vehicles. You know that there is an increase in the phenomenon of forged pay slips. You know that you cannot stop each and every vehicle, and even if you do, the prevalence of forged pink slips and fraudulently acquired pink slips, that is to say, the guy goes and buys insurance, writes the cheque and either stops payment on the cheque or gets it bounced because he missed—what do they call it, fraudulent misrepresentation, material misrepresentation or something—so you have got even prima facie valid pink slips out there. These officers cannot check these.

There is no system in place for a central registry of insured persons. You know that. You know that there is no statutory presumption arising from the failure to produce a pink slip, you know that, which means that prosecutors across Ontario are basically swimming upstream when it comes time to even prosecuting and proving these charges.

What has the government done, or has the government simply resigned itself to the fact that there is always going to be uninsured drivers out there and it cannot do anything about it and it does not intend to try to do anything about it? Is that what you are saying, Mr Ferraro?

Mr Ferraro: Let me say briefly that you will always have people who are going to break the law, regrettably. I am not sure whether Ms Parish can expound a little bit more on that for me or not. Quite frankly, you are always going to have those sad situations.

Mr Kormos: What about a central registry, a central documentation for insured vehicles, so that prosecutors have more ease in prosecuting and proving the case and/or so that police officers can confirm the validity or the currency of a particular pink slip?

Mr Ferraro: I think that is a good suggestion. Maybe the next step is that they pay their premiums only in cash, too, so that the cheques do not bounce, which is another problem we get into.

Mr Kormos: No, because part of this system, for instance, is monthly payments. So even if they pay in cash there will be—

Mr Ferraro: So they make monthly payments in cash.

Mr Kormos: No. They would be issued a pink slip. That would be good for the whole year.

Mr Philip: You have a central registry for driver's licences. You do not require that they pay in cash.

Mr Ferraro: I think it is a good discussion. I guess the concern from the other side perhaps might be that you are going to create another rent registry type of bureaucracy, and you will hear some arguments in that regard.

Mr Kormos: What? You are complaining about bureaucracy? The millions of dollars you are spending.

Mr Ferraro: On one hand you are arguing you do not want any bureaucracy; on the next hand you are giving us good—

Mr Kormos: Get off it, Rick.

The Chair: Shall section 217a carry? Same vote.

Section 52 agreed to.

Section 53:

The Chair: Anticipating Mr Kormos' question, what does it mean?

Mr Kormos: What does life mean?

Mr Philip: All the questions that you could not answer, we will be asking the minister in the committee of the whole.

Mr Nigro: Under the present drafting in the Insurance Act, there are certain situations where an insurer can escape liability where the car is rented or leased, is used for radioactive material, etc, but they cannot do it when we add that section. This would be excluded for liability for the no-fault benefits schedule, the accident benefits reg.

Section 53 agreed to.

Section 54 agreed to.

1440

Section 55:

The Chair: Mr Nixon moves that clause 230a(5)(a) of the Insurance Act, as set out in section 55 of the bill, be amended by adding at the end "or for loss of use."

Mr J. B. Nixon: The reason for the amendment to clause 230a(5)(a) is to add the phrase "or for loss of use" in order to make it consistent with subsection 230a(2). An insured can recover damages for loss of use of the automobile under the direct compensation scheme. The restriction under subsection 230a(5) on suing for such losses should therefore apply.

Mr Kormos: Perhaps this section 55 in the bill can be explained to us.

The Chair: Okay, section 230a. I am just looking for some explanation.

Mr Nigro: Basically, and Colleen can speak to this as well, where an insured vehicle is in an accident with another insured vehicle, you look to your own insurer for collection of property damage in inverse proportion to the amount that you were at fault. In other words, if I were driving my car, which is insured, and I hit Imants's car, which was also insured, and I was 100 per cent at fault and Imants was not at fault at all, he would look to his own policy to collect the property damage. I would look to my policy and get nothing because I was entirely at fault. However, if I were carrying collision, for example, I would collect under that cover.

It is a system which exists in Quebec. What you see in front of you is very similar to what exists in Quebec now for property damage.

Mr Kormos: How is the determination of fault in this instance arrived at?

Mr Nigro: Fault determination rules are going to be prescribed by regulation.

Mr Kormos: I'll be darned. And they are, of course, not prepared yet.

Mr Nigro: The fault determination rules prescribed in Quebec are regulations. We have certainly looked at those closely, and there are a number of examples. We would have to ensure that they would be consistent with the Ontario Highway Traffic Act, and that is what is being done now. We are consulting on the fault determination rules.

Mr Kormos: Did you examine as well the matter of public ownership of the bodily injury compensation system in Quebec, the one the Liberals campaigned on there in 1970? I am sorry, Mr Chairman.

The Chair: That is probably directed to the parliamentary assistant, who might want to venture a guess.

Mr Kormos: What you are saying is that if you get \$1,000 worth of damage and—

The Chair: And you were not carrying collision.

Mr Kormos: —the accident was 25 per cent your fault, your own insurer would pay you—how much?

Mr Nigro: It would be \$750. If you were carrying your own collision cover, and let's say you had a \$500 deductible, they would reduce the deductible to 25 per cent, because you were 25 per cent at fault. My math is pretty bad, but I think that is \$125. So then you would be able to collect the \$250 which you were not collecting as

a direct indemnity. Of that, you would collect \$125. I think that is the mathematics.

Ms Parrish: No—

Mr Nigro: It would be \$875.

Mr Kormos: But then there are people who have collision coverage as well.

Mr Nigro: That is taking into account your collision coverage.

Mr Kormos: What about people who do not have collision coverage?

Mr Nigro: They do what they do now when they are in an accident. When you are in an accident now and you are not carrying collision coverage, if you were 25 per cent at fault, you collect from the third-party insurer 75 per cent of your damage. You do not collect the whole amount. If you do not have collision to look to, then that comes out of your pocket, just as it would today.

Mr Kormos: Then why are people with Cadillacs and Lincolns going to have to pay 50 per cent premium increases?

Mr Nigro: The more expensive vehicles are going to be more expensive to repair. Insurers are going to know who the drivers of more expensive vehicles are when they write the policy. If you are looking to your own vehicle for the proportion, it becomes a more certain cost estimation in terms of the policy.

Mr Kormos: So we can go all the way on down the line. Cadillacs and Lincolns are sort of at the top end.

Mr Ferraro: And Corvettes.

Mr Kormos: Corvettes do not rust. Cadillacs and Lincolns are up at the top end, and a lot of the collision damage is as a result of pre-existent rusting.

Mr J. B. Nixon: I do not believe that.

The Chair: Acid rain.

Mr Kormos: Try owning one. Then you will believe it. So Cadillacs and Lincolns are up on top and they are going to be paying more than Ford Crown Victorias, but Ford Crown Victorias are going to be paying more than Ford Probes and Chevy Luminas. Is that fair to say?

Mr Ferraro: I do not know much about pricing automobile insurance in terms of the actual policies. Perhaps Ms Parrish can answer that.

Ms Parrish: I think it is true that when the premium is built in, people who drive very expensive cars like Lamborghinis will pay more for vehicle damage. People who drive relatively

inexpensive cars, senior citizens who maybe have a car that is eight or nine years old, will pay less. However, the insurer is still going to take many other factors into consideration. So let's put it this way. If you have an eight-year-old car but you are a very bad driver, have a bad claims record; a high-risk driver living in an urban area, you may still pay more than a relatively low-risk driver with an expensive car living in a rural area. It is just going to be one of the many factors that will go into the rating formulation. Just as you look at the experience, where you drive the car, how you drive the car, the kind of vehicle that you are driving, it is another rating consideration. Right now people who have relatively inexpensive cars pay for the potential that they may be involved in an accident with a very expensive car, and this sort of changes that. People are insured more closely to what they actually own.

Mr Kormos: The Skoda that hits the Testarossa?

Ms Parrish: I suppose they are both cars.

Mr Ferraro: If, for example, you are a rich socialist from Welland-Thorold, just to use that example, and you drive a Corvette, it is a reasonable assumption to say that that rich socialist from Welland-Thorold who drives a Corvette and drives frequently to Toronto is going to pay more than someone who drives a Taurus.

Mr Philip: That all means socialists have expensive cars.

Mr Kormos: Some are property rich, yes.

Mr Philip: I would not want anyone to label me.

Mr Kormos: Is this provision going to enhance the value of the automobile as a premium determinant? In other words, is it going to increase the value of the automobile as a factor in determining the premium, the cost of the premium? Is it going to increase the role of the value of the car in determining premiums?

Ms Parrish: No, no.

Mr Kormos: Or the function of the value of the car?

Ms Parrish: No, because when they set the third-party liability premium now, they have a component for vehicle damage, but it is priced in a very uncertain way because, as an insurer, I do not know whether I am going to be paying to repair an eight-year-old Nissan or a one-year-old Rolls Royce. Under the new system, the insurer will know what they are going to have to repair so

that the amount or the factor in the overall premium is the same, but the precision of costing is improved because you know what you are insuring.

Mr Kormos: What are the rules you are talking about in terms of premium setting? You are telling us about some universal set of rules that all insurers will be applying in premium setting. What is this universal set of rules?

Ms Parrish: It is true that each company tends to use a somewhat different classification system in rate determination. It is also the case that every company will have to have its classification methodology approved by the insurance commission before it uses it. However, the most common form of rating third-party liability premiums includes a component for that. I have never seen a company that files rates for third-party liability premiums that does not include vehicle-damaged units as a component. Now that component will still be there, as I said. There will be greater precision in the pricing. There will be variations between the pricing behaviours of different companies, as there are now, and they will all be subject to regulatory approval.

Mr Kormos: Because the regulations are not there yet. Perhaps either you, Ms Parrish, or the parliamentary assistant, Mr Ferraro, the Liberal from Guelph, can answer. What are the standards by which the commission will find a rating criteria acceptable or unacceptable?

Interjection.

1450

Mr Ferraro: The previous amendment I thought. There is no standard rating classification system at this juncture and there is no intent to move to one at this juncture.

Mr Kormos: Because you, Mr Ferraro, have stated that you do not believe the auto insurance industry. So how can you approach this whole matter while you have stated that; that you do not believe what the insurance industry has to say?

Mr Ferraro: I said I do not believe everything the auto industry says. You are absolutely correct. That is why we have the insurance commission. But on page 41 of the bill—

Mr Kormos: Wait a minute. Mr Ferraro, if I may, the quote is, "I do not believe quite frankly what the insurance companies say."

Mr Ferraro: That is right.

Mr Kormos: And that is the quote. If you do not believe the insurance companies—

Mr Ferraro: Not on all issues.

Mr Kormos: Then if you do not believe the insurance companies, then how can you approach this whole matter of premium setting, rate setting, without there being a standard to which each respective company's criteria can be compared?

Mr Ferraro: Let me answer it this way, if I can. You are absolutely right. I do not believe everything insurance companies say. Nor do I believe everything lawyers say or opposition members say or politicians say, quite frankly. Having said all that, that is why we have an independent commission and commissioner who is going to scrutinize and substantiate and verify all the things that go on in the automobile insurance business in Ontario.

Mr Kormos: So they close the barn door after the horse has bolted.

Mr Ferraro: There are certain basic standards, however, by which the insurance commission and commissioner will be able to judge the rate filings. I am not sure that is going to totally satisfy your concern, Mr Kormos, but page 41, for example, subsection 369(11) of the proposed act says:

"The commissioner shall refuse to approve an application respecting proposed classes of risk exposure that the commissioner considers,

"(a) are not reasonably predictive of risk; or

"(b) do not distinguish fairly between classes of risk exposure."

Those are parameters and essentially the standards by which he and the commission are going to make their determination.

Mr Kormos: But that does not define or lay out any guidelines for the commission. It also does not do this; it does not prevent an insurance company from laying out what might be perceived as a fair ratings schedule, but then high-grading, and picking and choosing what of their clients do they offset—

Mr Ferraro: No. What you have to remember—

Mr Kormos: Listen to me for a moment, Mr Ferraro.

Mr Ferraro: Okay.

Mr Kormos: You might find it valuable—offsetting any impact that approved ratings schedule would have. Because if they go to a ratings schedule that implies that they will accept seniors, for instance, and charge them a rate that is proportionate to their risk inherent to being a senior, and one is sceptical about that as compared to a pure bonus-malus system, which

has been urged upon you, which you have rejected none the less.

If they do that and they are approved, they simply decline to write seniors because that is what Don McKay, general manager of Facility Association says is going to happen. That is what Mr Justice Osborne says is going to happen. So it does not matter what they say about the prospective premiums for seniors or how senior age is going to affect your premium. They simply will refuse to write any seniors. It will not be a renewal situation, so people will not be able to complain. These people will not be written. They will be denied coverage.

You know seniors are going to get forced into Facility.

Mr Ferraro: That is not true.

Mr Kormos: Senior citizens, retired people, old people are going to be forced into paying \$2,000, \$3,000 and \$4,000 a year premiums.

Mr Ferraro: That is not true.

Mr Kormos: Don McKay says so. Is he lying? Mr Justice Osborne says so. Is he lying?

Mr Ferraro: That is not true.

Mr Kormos: Are you calling these people liars?

Mr Ferraro: No. You are.

Mr Kormos: Or do you throw them in the same category as the insurance industry; you do not believe them either?

Mr Ferraro: Oh, no.

The Chair: Mr Ferraro, then, on the amendment.

Mr Ferraro: Mr Chairman, I would just say before Mr Kormos frightens every living soul in North America into committing suicide—

Mr Kormos: They are already scared.

Mr Ferraro: —and needlessly, quite frankly.

Mr Kormos: They are scared because they have seen this government's performance for so long.

Mr Ferraro: I would just say that there are parameters by which the insurance commission and commissioner are going to be able to analyse, and that is part and parcel and incumbent upon the process involved with the rate filing system. There are underwriting controls that we alluded to ad nauseam, quite frankly, this morning that will persist. If you are on the commission or the commissioner yourself, you have the advantage, unlike being in a government-run insurance scheme that is advocated by the New Democratic Party—

Mr Kormos: The Liberals in Quebec—

Mr Ferraro: —you have the advantage of looking at 140 filings and essentially saying, "Well, okay. In a free-enterprise, competitive market, you can look at all these filings and that in itself is a guideline or a judge by which a determination as to whether or not a company or a number of companies are being unreasonable or unfair or unjust."

Mr Kormos: Then how is it that companies, among them Co-operators, were permitted to holus-bolus decline to cover people in certain urban areas of Ontario just across the board—

Mr Ferraro: They did not decline to cover. They declined to write new insurance, as I understand it.

Mr Kormos: They declined to cover. What are you talking about?

Mr Ferraro: No, there is a distinction.

Mr Kormos: Declined to cover—

Mr Ferraro: The impression you might be giving is that they said, "We are terminating your insurance." That is not the case.

Mr Kormos: They declined to cover.

Mr Ferraro: They declined for a number of reasons. I do not know if you want me to get on to this or not, Mr Chairman.

The Chair: It is not really on the amendment, but just finish that line.

Mr Kormos: He may prompt another question, Mr Chairman.

Mr Ferraro: The reasons specifically were because of the bodily injury claims, and indeed the rate controls that were put on them by our government, inflation in itself, a number of variables that enter into why we have to pay higher prices for just about everything.

Mr Kormos: And what about the premium shuffles that were taking place, the flips? You know about those.

Mr Ferraro: There were some situations where people were being mistreated, which obviously the new insurance commission and commissioner will deal with, with a significant degree of clout.

Mr Kormos: What did the ministry or the superintendent do for those people who were victims of those premium shuffles and those premium flips when the ministry was advised of them by myself and—

Mr Ferraro: Mr Kormos, I acknowledge the original legislation that the superintendent of

insurance is operating under right now is totally inefficient.

Mr Kormos: You sang a different tune yesterday, didn't you?

Mr Ferraro: Inefficient from the standpoint of having teeth.

Mr Kormos: You sang a different tune yesterday.

Mr Ferraro: No, no.

Mr Kormos: You were all defensive of the superintendent. I told you that it was grossly inadequate.

Mr Ferraro: No. I said the tools he had to play with, quite frankly, were—

Mr Kormos: Play is right. That is right. All you are doing here is playing games.

Mr Ferraro: —inaccurate, were insufficient.

Mr Kormos: You are not serious about getting down to work and solving the problems of drivers and insurance across Ontario.

Mr Ferraro: The superintendent of insurance is a good man.

Mr Kormos: You are playing more games.

The Chair: Shall the amendment carry? Same vote. Shall section 230a, as amended, carry? Carried.

The Chair: Mr J. B. Nixon moves that subsection 230b(1) of the Insurance Act, as set out in section 55 of the bill, be struck out and the following substituted:

“(1) If an automobile insured under a contract is involved in an incident that is required to be reported to police under the Highway Traffic Act, the insured shall give to the insurer written notice, with all available particulars, of the incident.”

Mr J. B. Nixon: The rationale for this amendment is to ensure that the notice provision does not become dated because of future amendments to the Highway Traffic Act. The current reference to \$700 in Bill 68 is presently the requirement in the Highway Traffic Act, but this will from time to time in the future be increased. The amendment will keep the requirement under subsection 230b(1) consistent with the notice requirements under the Highway Traffic Act.

Mr Kormos: What is the rationale for this?

Mr Nigro: I guess there are two rationales. The major one is to prevent leakage in the system so that all accidents are reported and so that there can be proper rating. The second rationale, I

guess, is to be consistent with the requirements under the Highway Traffic Act.

Mr Kormos: What are the Highway Traffic Act provisions?

Mr Nigro: The regulation under the Highway Traffic Act requires reporting of accidents where the damages are \$700 or more.

Mr Philip: In what time frame?

Mr Nigro: I am not sure. I do not have the regulations of the Highway Traffic Act.

Mr Kormos: How fair is that? How can a driver, especially in this day and age, be expected to know the extent of damage? Granted in some cases it is obvious all right, but what about—I mean, holy cow. Some tail-light lenses are \$200 and \$300, if you do not buy American, if you buy Japanese or European. Yet the reasonable person could not be expected to assess the damage that high. So how fair is this requirement and what are the consequences of failing to report? That is perhaps a more salient question.

Mr Ferraro: Could I attempt to answer part of that? Subsection 230b(3) states, “If the insured is unable because of incapacity to comply with subsection (1) within seven days of the incident, the insured shall comply as soon as possible thereafter.” So, I suggest, Mr Kormos, that in the situation that you are drawing for the committee, it is covered.

1500

Mr Kormos: No, no. That is incapacity.

Mr Ferraro: You are incapable of determining the cost of the damage.

Mr Kormos: You know, somebody is going to take that from Hansard and use it in litigation and say, “This is what the parliamentary assistant said that section meant,” and your name is going to be bandied about like you never heard it passed around before.

Mr Ferraro: More so than it is now?

Mr Kormos: More so than it is now and, quite frankly—

Mr Ferraro: What price glory.

Mr Kormos: —in a far less pleasant context.

Mr Ferraro: I am not so sure.

Mr Kormos: When we get to that section I am going to ask these lawyers over here what that means, if it indeed means what the parliamentary assistant says it means; that incapacity means you are incapable of determining the amount of the damage *inter alia*.

Mr Nigro: The notice is seven days.

The Vice-Chair: What does that word mean?

Mr J. B. Nixon: Rick knows.

The Vice-Chair: Okay.

Mr Ferraro: It is a very seraphimic statement.

The Vice-Chair: Seraphimic? Not cherubimic? That's angels, too.

Mr Kormos: Cherubic.

Mr J. B. Nixon: Should we put the question?

Mr Kormos: No, no. We have got a question here. The parliamentary assistant tried to answer it. He flubbed that one. Will you help him out?

Mr Nigro: Mr Kormos, in answer to part of your question, the strict rule of evidence is that, except in constitutional matters, one does not refer to parliamentary debates in court.

Mr Kormos: It won't stop some smart lawyer.

Mr Nigro: But in terms of the answer to subsection 230b(3), the term "incapacity" there does refer to the incapacity of the insured. The notice provision is that in the case of the damages, within seven days. So if you are uncertain as to the amount of damage to your car, one presumes you get at least a good idea or some idea within a week of the incident occurring. But if somebody was very seriously injured as a result of an accident, we do not expect him or her to give notice under this section in seven days, if they are in a coma or in a hospital in a traumatized condition.

Mr Kormos: But does the failure to give notice leave somebody out in the cold and make the insurer not liable to that person because he did not give notice?

Mr Nigro: No. The failure to give notice there might leave an insured person in contravention of the Insurance Act; in fact, I think it would. I do not think it leaves them out in the cold. There are requirements now under the statutory conditions regarding the reporting of incidents. All this really does is set a threshold at which they must be reported, basically because with the introduction of direct indemnity, if you do not carry collision insurance and you are in what could be a relatively serious accident and your vehicle is badly damaged, you may have good incentives not to report. To maintain the integrity of the system, of the overall rating classification system, it is important those things get reported.

Mr Kormos: So, what is happening here? There is no obligation to report an incident under the current system unless you expect to be compensated by the insurer.

Mr Nigro: There is an obligation under the Highway Traffic Act.

Mr Kormos: But to the insurer.

Mr Nigro: That is right.

Mr Kormos: The insurer.

Mr Nigro: Under the statutory conditions, under subsection 230b(3), there is a requirement where there is lawsuit or damage to the persons or property. Again, it is within seven days that notice is required to be given. The statutory conditions are part of every contract.

Mr Abols: The statutory condition was amended yesterday. We retained that seven days, but also there is a saving provision at the end. If you cannot within seven days, because of incapacity, you can comply as soon as possible thereafter.

Mr Philip: What is "incapacity"? There is a problem I have with that. I have known people who have had what you and I might consider a minor physiological accident, but it is psychologically very traumatizing to them and they are kind of in a state of shock or emotional upheaval for several weeks. They may have been drunk at the time and therefore do not remember that they were in an accident. What is the incapacity?

Mr Nigro: Incapacity, I think, would be taken by a court to mean having its ordinary natural meaning and it would simply refer to a dictionary definition. In terms of how the standard would be applied, unless you say otherwise, I think that is a subjective standard. The court will look at the individual and not try to set some sort of objective test. In fact, in my view you would have to say it was objective, if you meant that it would be objective.

So if you have a thin skull, if I use that language, and you are traumatized psychologically because of the accident, although the physical injury appears to be quite minor and you are incapable such that your faculties are reduced to the degree where we would not expect you to make notice, I think that is probably sufficient in a court.

Mr Abols: I think in essence it depends on the facts of each case and we do look to the courts to apply these provisions in such a way that they are applied appropriately in a given set of circumstances.

Mr Kormos: Now, you heard Mr Ferraro, the parliamentary assistant to the Minister of Financial Institutions, explain that this meant, among other things, that if a person was not sure about how much damage there was, what the value of

that damage was, that would constitute an incapacity. Is he correct when he says that?

Mr Ferraro: It was my subjective decision.

Mr Nigro: I think Mr Ferraro, being a cautious and prudent member of the Legislature, would ask legal counsel about that before rendering any final decision on that.

Mr Kormos: Ah. Perhaps Mr Ferraro's response to my question could be struck from the record.

Mr Ferraro: No. I stand by my subjective decision and my definition of "incapacity" and I thank Mr Nigro for his assistance. If I had to go to court I would ask his advice.

Mr Kormos: He is suggesting to you now that you should—

The Vice-Chair: Be careful.

Mr Kormos: —use more caution. I am just trying to help this process along.

Mr Ferraro: Somebody once told me, if I wanted security, I should rob a bank and get 10 years.

Mr Kormos: I am prepared to consent to Mr Ferraro's initial response to my question being removed from the record, if that is unanimous.

Mr Ferraro: No. I think it should be left there.

Mr Kormos: Because it will only serve to embarrass him—

Mr Ferraro: Not at all.

Mr Kormos: —and display his inadequacy when it comes to understanding what this legislation is all about. The only person he did not say that he did not believe was the Minister of Financial Institutions (Mr Elston). So maybe it should be removed from the record to save the minister from shame, because one can only presume that it is the minister who told Mr Ferraro what "incapacity" means.

Mr Ferraro: May I respond? I am conscious of the concern my colleague has for my wellbeing. It is tantamount to having somebody throw me an anchor if I were drowning. Suffice it to say I am perfectly comfortable living with the statement I previously made. But I thank him very much for his concern.

Mr Kormos: Any time, Mr Ferraro, any time. If you are ever in water over your head, give me a call.

The Vice-Chair: Okay, shall the amendment to the amendment of section 230b carry? Carried. Subsection 230b(1).

Mr Kormos: What are we talking about when we talk about statutory conditions 3(1)(a) and 4(1)(a)?

Mr Abols: We are talking about the statutory conditions that we reviewed yesterday that require you, under the policy, to give your insurer notice of any damages you sustain to your automobile or to other property or to yourself.

Mr Kormos: Is there any provision for describing what "notice" constitutes in this context? Because the same word "notice" is used here. And this is what is interesting, and you folks know more about this than anybody else here. The same word "notice" is used here as over at section 208a. Now clause 208a(1)(a) says "notice in writing," right? This just says "notice."

Mr Nigro: Because we tie into the statutory conditions; section 9 of the statutory conditions describes notice as being "written notice."

Mr Kormos: Written notice? It is in the first part: "The insured shall promptly give to the insurer written notice." Once again, service is constituted how, in the instance of the insured giving notice?

Mr Nigro: Registered mail.

Mr Kormos: The insured, just a plain person, has to live up to the same standards. Registered mail; that means a phone call would not be adequate.

Mr Abols: I think in practice you would find that a phone call is adequate. This is a provision that addresses the insurer's needs; but if the insurer waives that requirement, and that happens, I think, regularly in practice, there is nothing preventing him from doing so.

Mr Philip: Let me tell you, I would do a lot of writing if they waived it on me.

Mr Kormos: You have got a whole lot of caveat emptor here.

Mr Philip: I would want it in writing if they waived it on me.

1510

Mr Abols: You could very well ask that, but I think you would save yourself a lot of time if you simply followed the statutory provisions and conditions.

Mr Kormos: Wait a minute. Mr Ferraro still does not even understand the legislation and he is the member for Guelph, the Liberal parliamentary assistant to the Minister of Financial Institutions. He has been as intimately involved with the insurance industry and the drafting of this legislation as anybody could be, Lord knows. As

Floyd always says, "Why don't you look over the pillow and find out who you are in bed with?" Mr Ferraro has looked up over that pillow and stared into the insurance industry's deep gaze many, many a time. He does not understand the legislation.

Are you saying that Ms or Mr Consumer is going to have a more ready understanding? What are you saying? If they were prudent? Of course, if the dog had not stopped to smell, he would have caught the rabbit.

If they were more prudent—that is paraphrased—they would do a whole lot of things. There has been a lot of fluff about this being great stuff, full of all this consumer protection stuff. We know that is not true. Do not put the coins on the eyes of this corpse. Where is the consumer protection inherent in this?

The Chair: People in glass houses should not take showers.

Mr Kormos: I am going to use that next.

Mr Ferraro: How about, two rights do not make a wrong?

Mr Kormos: Where is the consumer protection in this section? How are consumers going to be notified or advised of their statutory obligation to provide written notice, failing which they could—

Mr Abols: With every policy you are supposed to be given a copy of the statutory conditions. You have those conditions before you with your policy.

Mr Philip: I am sure my constituents, many of whom read at a grade-8 Italian level, are going to read through all of those statutory conditions.

Mr Abols: I am sure your constituents, like I, myself, rely on the offices of their insurance brokers. Invariably, when I report an accident I report it to my insurance broker who in turn then, as my agent, reports it to the insurer.

Mr Kormos: What if you are dealing without a broker?

Mr Ferraro: Then you could call the insurance commission.

Mr Kormos: Oh, that is big; just like people could call the Ontario Automobile Insurance Board. Come on. We have had too many of them trying to do that.

Mr Abols: Are we addressing the worst-case scenario?

Mr Kormos: Yes. Let's look at the worst-case scenario.

Mr Ferraro: Let me assure you, Mr Abols, this is the worst-case scenario.

Mr Kormos: Things are not going to get any better for the Liberals. You can rest assured of that.

Mr Abols: There is a provision in the Insurance Act which we have not amended. It is a general forfeiture provision which says that if this is ever an issue that an insurance company would stand on in trying to resist a claim, the court has an equitable jurisdiction to relieve the consumers from forfeiting any rights they may have under the policy but for this technical breach.

Mr Kormos: Before we get to that point, you mean the consumer has to sue his own insurance company. He has to go to a lawyer. He has to issue a writ.

Mr Abols: You will not find very many cases reported under that section because, quite frankly, I think it reflects the fact that that does not happen; but if it happens it happens.

Mr Kormos: What are we doing in this section to protect the consumer? Surely you cannot place the same standard on Ms or Mr Consumer as you do on a big, wealthy, corporate insurance company that can buy governments and buy legislation. Surely you are not going to put the same onus on that same little guy, are you?

Mr Ferraro: The rich socialist lawyer from Welland-Thorold.

Mr Abols: This is a provision, quite frankly, that has not generated concerns. It has worked presently; it will work in the future. There was no policy direction or indication that this was a problem.

Mr Kormos: Okay, sorry. You are right. Just as the minister uses Rick Ferraro as the whipping boy, sends him out there to deal with stuff that the minister does not want to deal with, you are quite right, all you do is follow orders. This is the Nuremberg defence we are hearing now. Mr Ferraro, perhaps more appropriately to you—and my apologies to counsel. I appreciate this is unfair and you can take this up with your employer in due course, perhaps the next time when it comes to negotiating salary increases.

Mr Ferraro, let's talk about the policy inherent here. Surely you do not want to put the same onus on the consumer as you do on a wealthy, powerful profitable, big corporate insurance company, do you?

Mr Ferraro: I am not sure in what context you are posing that question.

Mr Kormos: Let's get back down to where we are going here. We are talking about what is

going to be section 230b, notice of damages. That is on page 28 of the bill, right at the very bottom, the second-to-last paragraph.

Mr Ferraro: That has been amended. You are speaking to the new version?

Mr Kormos: We are dealing with it now as amended. We are talking about an insured being required to give notice to the insurer. We are talking about notice, according to the counsel, being by definition written notice by registered mail. Right? Did you hear that, Mr Ferraro?

Mr Ferraro: I watched your lips moving.

Mr Kormos: Why would you want to place that burden on the consumer? Why would you not want a fairer standard of notice for the consumer? Why would you not want to articulate in your bill, in your act, that verbal notice could be sufficient, that some notice is what is required? Really, is that not what we want to say, that some notice is required?

Mr Nigro: Mr Kormos, I do not know if this is going to further the understanding of the legislation, but as the statutory conditions now stand they do require written notice. I stand to be corrected here, but I do not think there have been a lot of consumer complaints to the superintendent's office about that. More to the point, if you think about what is being asked here, you can establish your claim. I mean, what you are being asked for are details on the claim which must be provided. I think that you pretty well do that sort of thing in writing. You have to do that sort of thing in writing.

Mr Kormos: Except, you have a time limitation on it.

Mr Nigro: But you have a time limitation today as well.

Mr Kormos: You have a time limitation on it and the time limitation is for written notice. Really, when you talk about this initial state or this initial stage of obligation, what you are talking about is some notice. Sure, you may want to carry on and require the insured then to provide a written—what do they call it?—whatever they call the statements that one has to make to an insurer. What you are talking about here is the initial contact, are you not? You are talking about notice. You are talking about the onset of a process, the initiation of a process.

Mr Abols: I think what you are doing, though, is ignoring reality. The fact is that if anybody has an accident, I think one of the first things the person does is advise his insurer. If the insurer says, "Fine, I'd like the details in writing," then the person would, I assume, take that direction.

Mr Kormos: In view of the sad state of affairs, I would like to think that people would first call their lawyer.

Mr Abols: They will probably follow that up too, but I simply reiterate what my colleague has said, that we have not been advised by our client, the superintendent of insurance, that this has been a problem area, that there have been consumer complaints about that requirement which is currently in the act and currently in the statutory conditions.

Mr Kormos: According to the superintendent of insurance there have not been any problems. Everybody gets a "Dear John" letter saying: "What's your problem? So what if you didn't get renewed? What's your problem? So what if you got arbitrarily cancelled? So what's your problem? So what if your insurance rates are jacked up 80 per cent? You don't have a problem. Now pay the money."

Mr Ferraro: That is not totally correct.

Mr Kormos: It is darned close.

Mr Ferraro: No, it is not.

Mr Philip: I just applied to the superintendent of insurance in a case where a company has used the non-notification as grounds for cancelling the insurance. In this case it was for not notifying the police, not for not notifying the insurance company, but they used a technicality like that. The reason the guy did not notify the police was that the police did not show up. After an hour of waiting, when the guy that hit him took off, he decided it might be prudent to go to a hospital and have himself checked out. If an insurance company would use a technicality like that for cancelling insurance, why would it not use a technicality like that for not paying insurance? We see this kind of thing happening.

1520

Mr Ferraro: Maybe Ms Parrish can respond to that.

Ms Parrish: I think the issue of arbitrary insurance behaviour in dropping people is an issue that has been addressed by this legislation in the underwriting rules and the underwriting powers. To date there has not been any ability to deal with those kinds of problems. I would say, however, that the point that Mr Abols made is an important one to understand in that insurance companies know that the antiforfeiture provisions are there, and they know that if they rely upon a technical defence like that, the antiforfeiture provisions will apply. They can, in some cases, I guess, rely upon the sort of unequal relationship between the insurance company and

the insured person and sort of hope that the insured person never finds out.

But of course once people retain a lawyer or other advice or speak to their broker, because the brokers also know about the antiforfeiture provisions, they usually find out very quickly that the insurance company cannot insist upon these kinds of technical defences. So they do not use them very often. As well, when complaints do come in to consumer services officers, this is a point that they make to the insurance companies and often the insurance companies do back down. That is why you see very few cases on these kinds of technical defences, because they usually are dealt with within the process.

The Chair: Shall the amended 230b carry? Same vote.

Section 55, as amended, agreed to.

Section 56:

Mr Kormos: May I beg the standard question, please?

The Chair: Yes. What does it mean?

Mr Abols: This, again, is to make the provision consistent with changes in the Family Law Act. We do not require this cohabitation. I believe subsection 231(2) relates to the definition of the person insured under the contract. So we have simply extended the concept of the person insured in the contract to include spouses who may not necessarily be residing in the same home but still are in a state of financial dependency.

The Chair: Shall 56(2)(a) carry?

Mr Kormos: Whoa. We are talking about (2)(a). We are confusing apples and oranges here. We have got one clause (a) and (b), clause 231(2)(b), and now we are on to 231, right? We have not discussed 231.

Clerk of the Committee: We have just done (1)(a).

The Chair: Now we are on?

Clerk of the Committee: Clause (1)(b).

The Chair: Shall clause 56(1)(b) carry? Same vote. Now 56(2a).

Mr Kormos: What does that mean?

The Chair: What does that mean?

Mr Nigro: Basically it excludes someone from insurance coverage, someone in a vehicle, when the vehicle is being operated or used by an excluded driver and the person is deemed not to be an insured person, except that he would still be an insured person for purposes of the no-fault benefits of the accident benefit rate. So, in other words, they can still collect under the accident

benefit rates, but they are otherwise deemed to be uninsured.

Mr Kormos: Gee, I am sorry, I did not understand that.

The Chair: Do you want to try that again?

Mr Nigro: Basically, the amendment is consistent in general with what is going on with the excluded driver. The coverage under the vehicle policy is not available while the excluded driver drives the vehicle where the person has agreed in writing that he or she will not drive the vehicle, except if you can still collect no-fault benefits.

Mr Kormos: So this, again, helps send that victim to the motor vehicle accident claims fund instead of to an insurer.

Mr Abols: Not necessarily, if there is other insurance out there. If that person does not have his or her own insurance.

Ms Parrish: This is the provision that says that if you are hit by somebody who is an excluded driver and you do not have insurance of your own, you are still entitled to the no-fault benefits. So, actually, it has the opposite effect.

Mr Kormos: That is the distinction between calling this half empty or half full; that is the famous glass of water, is it not, Ms Parrish? You are saying this entitles the person to the no-fault; I am saying, big deal, because what it also does at the same time is exclude that person from compensation by the insurer and force that person to go to the motor vehicle accident claims fund, which has a significantly lower cap, moneys payable under the fund, than is available under most insurance policies in Ontario. We know full well that most insurance policies are at least \$500,000 coverage as compared to the \$200,000 available from the motor vehicle accident claims fund, and in addition, the motor vehicle accident claims fund, as we learned—and appreciating the candour—comes from drivers across Ontario, who pay into it through the levies charged against their driver's licences. That is what this section does: it reinforces what we talked about earlier.

Again, what is the rationale here? If it is an excluded driver, how can we create that sort of bastard situation wherein it is an excluded driver, you do not want the insurance coverage there, but you can provide the no-faults, yet you will not provide the other compensatory benefits even for the person who is dead or damned close to it and manages to cross the threshold? Why not take the bull by at least one horn? Just lay it out either as an excluded driver and there is coverage or there

is not. Why not do one or the other? What is going on here, policywise?

The Chair: Mr Ferraro is not here to answer that question.

Mr Kormos: Okay, I am sorry.

Mr Philip: Perhaps we can wait until he gets off the phone.

The Chair: We could stand that down and move on to section 5a. Mr Nixon, you have an amendment? Sorry. Shall subsection 5a carry?

Mr Kormos: No, wait. Maybe Mr Nixon does not have a question; I do. What does that mean?

The Chair: I knew that was coming.

Mr Kormos: Look, I think we have got them this time.

The Chair: Stumped. Too bad, so sad.

Ms Parrish: Subsection (5a): "No person has a right of action against any other person..." Is that the section you want to discuss?

Mr Nigro: If the person was required to have auto insurance at the time the damage occurred, his or her right to recover for property damage is precluded, is removed. It is an incentive to carry insurance, essentially.

Ms Parrish: It means that if you are an uninsured driver and you are in an accident, you have no insurance for your own vehicle damage.

Mr Kormos: You are SOL.

The Chair: Sorry, out of luck.

Ms Parrish: You have no coverage for your damage because you have carried no insurance, and this is from a perspective intended to exert significant pressure on people to buy insurance. I think you asked that question earlier on as to what kind of incentives exist. Unfortunately and regrettably, it appears that many uninsured drivers are more concerned about their vehicle than they are about the potential damage that they may be causing to other persons. If we provide that if you have an accident, whether it is your fault or whether it is not your fault, if you have no insurance, you have no vehicle coverage, that is an incentive for people to have insurance.

Mr Kormos: We are talking only about property damage here, is that correct?

Ms Parrish: Vehicle damage.

Mr Kormos: That is right, vehicle damage, car contents, not the light poles—

Ms Parrish: Not hydro poles.

Mr Kormos: So that means that if the person has an uninsured vehicle on the road and a drunk driver—the Jaguar or Mercedes-Benz—goes through a stop sign or a stop light and totals that

uninsured vehicle, the uninsured motorist cannot expect the drunk driver to compensate him for that vehicle.

Ms Parrish: That is right.

The Chair: He should not be on the road in the first place.

Mr Kormos: Quite right, but wait a minute. These gentlemen told us about that Compulsory Automobile Insurance Act—I think it is section 2, give or take—which talks about needing insurance before you go on the road. I am told that is a minimum fine of \$500 for operating a vehicle without insurance. So there are provisions there. Is that correct?

Mr Nigro: Not more than \$2,500, not less than \$500.

1530

Mr Kormos: I just picked those figures out of the air. I figured I was going to emulate the Liberals for the briefest of moments. So you have significant penalties there for the uninsured vehicle owner. So let's get back to my question. That means that the drunk who goes through the stop sign does not have to pay for the damage caused to that vehicle.

The Chair: Is this drunk insured or uninsured when he hits another uninsured?

Mr Kormos: Insured.

The Chair: Okay, so the drunk insured driver hits an uninsured car.

Mr Parrish: Under the direct compensation system, each person must be covered from his or her own insurer. So the drunk person is completely at fault; he or she receives no compensation for his or her demolished whatever-it-was. So they get nothing from his or her own insurance company unless they carried collision insurance. Otherwise his very valuable vehicle may be wiped out and he gets no insurance. The person who is driving an uninsured car has no insurer to claim against, because he did not buy insurance.

Mr Kormos: You have got a negligent driver who hit him.

Mr Parrish: Sure he does, but he does not have insurance and he has not bought first-party fault-based insurance under a direct compensation system.

Mr Kormos: So this in effect could once again have the effect of—I liked that phrase that was used a few days ago—tort immunity. So this could have the effect of creating a tort immunity for the negligent driver.

The Chair: I think he would still be able to sue if he were seriously injured.

Mr Kormos: It is a vehicle. Right now there is only vehicular damage.

Ms Parrish: This is only vehicle damage.

Mr Kormos: Am I correct in that regard, Ms Parrish, that the negligent driver in this case is protected against any liability for his complete wrongdoing?

Mr Philip: If you are going to drive and drink, make sure you bang into somebody who does not have insurance.

Mr Kormos: That is right.

Ms Parrish: You can bang into anyone, actually, because under the direct compensation system what would happen is that if a drunk driver hits me I still recover against my own insurance company, but because I have insurance I get 100 per cent of the damage that is done, directly from my own company. The only reason that this person did not recover was because he did not buy insurance, which is required by law in Ontario. If they had bought insurance as they are required to do by law, they would get 100 per cent of the damage that was done to them directly. The person who was drunk and caused the accident would get nothing unless he had bought collision insurance.

Mr Kormos: As I understand the world as it exists now, most drivers have insurance but you do not have to use your insurance if you do not want to. That is to say that it happens oftentimes that a fender-bender in a plaza parking lot would be resolved—at least in the small towns where I come from—on an honour system.

The Chair: If it is under \$700.

Mr Kormos: Oh, yes. People, of course, would not think of violating the Highway Traffic Act, but those sorts of conflicts are resolved on something of an honour system. People say, "Look, it was my fault," or the other person says, "It was my fault," or we agree that we will each get estimates. We exchange cash because we know, hah, we know that the insurance companies are so unforgiving of momentary inadvertence. They do not just hang their hats on major negligence. Momentary inadvertence can jack up your insurance premiums like you never dreamed.

Similarly, if I bang into somebody and I am reluctant to pay him and that person wants to sue me, I do not have to involve my insurer. When that person sues me I do not have to take that writ to my insurer. I can defend the action myself and assume personal—as a matter of fact, it is not a

matter of assuming; if the judgement is valid, if they obtain a judgement, it is against me personally, it is not against my insurance company. My relationship with my insurer is mine. That is a contractual relationship that I have with my insurer. The injured party does not have a contractual relationship with my insurer, in the world as we know it now. Is that correct?

Ms Parrish: Not exactly.

Mr Kormos: Tell me where I am wrong.

Mr Nigro: There may be a bit of a fiction created where a person who is not a party to the contract of automobile insurance for certain purposes does become a party to the contract of auto insurance.

Ms Parrish: Yes, but the normal law of privity is not actually applicable in the case of auto accidents.

Mr Kormos: But it remains that whether or not I wish to invoke my insurer's contractual obligations to me to do things like defend or participate in the defence and to do things like pay out claims that are made against me, if John Doe is sued in Small Claims Court and a judgement is obtained against John Doe, John Doe does not have to give that judgement to his insurer. John Doe can pay it himself and leave the insurer sitting high and dry.

What this does is change the world remarkably, because it goes beyond traditional insurance roles. This goes to tort immunity. What you are saying here is that the owner of an uninsured vehicle that suffers damages cannot seek compensation for damage to his vehicle. Forget the insurance companies; what is happening here with this clause, along with so many others in this bill, is that you are going to something far more profound that just the role of insurance companies. It is tantamount to the government extending that and saying, "People who don't fix the front steps on their houses..."

I remember the Mitch Hepburn amendment to the Highway Traffic Act, the one that was just changed, about gross negligence in the case of gratuitous passengers. The anecdote, at least the one that has been repeated so many times, is that Mitch Hepburn had occasion to pick up a hitchhiker somewhere in Ontario, got involved in a motor vehicle accident and to protect himself had an amendment moved to the HTA requiring gross negligence before a gratuitous passenger could sue. Since then it has been eliminated. Am I correct?

Mr Nigro: I am not current on the amendments to the Highway Traffic Act.

Mr Kormos: I do not know a whole lot about that kind of law, but as I say, what that did was alter or create an immunity to negligent parties or persons. In effect, Ms Parrish, that is what we are doing here. Was that the policy intent?

Mr Parrish: Yes?

Mr Ferraro: Yes.

Mr Kormos: There was an echo. I heard Ms Parrish say yes and then—

Mr Parrish: My yes was inquiring, yes? Mr Ferraro confirmed it.

Mr Kormos: Oh, Ms Parrish. Mr Ferraro might have misconstrued that and thought that was an instruction, not a request.

Ms Parrish: You are quite right that if that was the appearance, it would be quite wrong.

Mr Kormos: That was the policy intent: to fundamentally attack the very concepts of liability and responsibility and to create tort immunities for bad drivers. Is that correct, Mr Ferraro?

Mr Ferraro: No.

Mr Kormos: I saw her shaking her head too.

The Chair: Shall subsection 231(5a) carry? Same vote.

Mr Nixon moves that subsection 231(5b) of the Insurance Act as set out in subsection 56(3) of the bill, be struck out.

Mr J. B. Nixon: The rationale is that subsection 231(5b) protects uninsured drivers from tort liability for damage they cause to other vehicles. Repealing this section will act as a strong deterrent to uninsured motorists from driving.

Mr Kormos: What does that mean?

Mr Nigro: The drafting you had in front of you initially, the subsection 231(5b) unamended, would have prevented an insurer from having a right of subrogation or indemnification against an uninsured driver where a claim was made under the uninsured coverage, which is mandatory in every automobile policy in the province, except according to the regulations.

We did not want to remove that right. We are going to permit insurers to seek recovery in that situation. In other words, an insurer remains subrogated of the rights of the insured where it has made a payment under a claim against an uninsured motorist's coverage.

The way the law stands now in Ontario is that where an insurer makes a payment under the uninsured motorist coverage, the insurer can stand in the name of the insured and take an action against the uninsured driver. The way the

amendment would have worked is that that would not have been permitted except as it is spelled out in the regulations.

What Mr Nixon has done is remove the section as initially drafted, thereby restoring the right of an insurer to take that action against an uninsured driver.

1540

Mr Kormos: Could you illustrate that with an example so that we can understand it clearly?

Mr Nigro: Okay. I am driving my vehicle. I am in an accident with an uninsured driver. I make a claim against my uninsured motorist coverage, which is mandatory in every policy in the province, and I get recovery. My insurer now—

Mr Kormos: What do you mean, your uninsured motorist coverage?

Mr Nigro: That is mandatory in the province. You have an uninsured coverage. It is established under section 231 of the Insurance Act.

Mr Kormos: I see. It is part of my policy.

Mr Nigro: It is part of your policy. You make a claim and recover from your insurer. Your insurer can then stand in your place and seek recovery from the uninsured driver in his or her personal capacity. Initially, what had happened because of the direct indemnity scheme was that we were going to remove that right of subrogation, as we generally remove the right of subrogation or indemnification, except that we were going to allow it for limited purposes in the regulations.

On reflection, and pursuant to discussions, it was decided that that was not a good policy and we have removed it. Now all we have done is that we are back to where we are now. Where you make a claim against your uninsured motorist coverage under your policy, an insurance company can still look to the uninsured driver and stand in your place and bring in an action against an uninsured driver.

Mr Kormos: But then does the uninsured driver not get defended by the motor vehicle accident claims fund?

Mr Nigro: Not where there is property damage. I would not think so.

Mr Kormos: Oh, I am sorry. Is this just property damage?

Mr Ferraro: Correct.

Mr Kormos: It is only applicable—because I think there has to be some personal injury. But when there is some personal injury, is not property damage included? I do not know. When

there is some personal injury; that is the threshold for the motor vehicles accident claims fund, is it not?

Ms Parrish: Yes.

Mr Nigro: The MVAC would only apply where there is no uninsured coverage. There is uninsured coverage here. The insured has recovered against his or her own policy.

Mr Kormos: You mean the motor vehicle accident claims fund will not come into effect where there is—

Ms Parrish: Uninsured coverage.

Mr Nigro: Where there is uninsured coverage. Yes.

Mr Kormos: Is every policy going to have uninsured coverage?

Mr Nigro: Yes. It is mandatory.

Ms Parrish: It does now.

Mr Kormos: In what instances would the Motor Vehicle Accident Claims Act and its fund be relevant?

Mr Nigro: Where there is no insurance available.

Mr Kormos: Okay. So you are talking about a cyclist or a pedestrian. You are saying that the motor vehiclist who is uninsured and suffers property damage cannot go to anybody for his property damage because he is uninsured. He is barred. But what compensation does the motor vehiclist get who is uninsured and who suffers personal injury in a collision with an uninsured vehicle? Fault is not at issue—correct?

The Chair: For?

Mr Kormos: Let us say, for his loss.

Mr Ferraro: In the cases where there is no insurance whatsoever—that is what you are saying.

Mr Kormos: Yes.

Mr Ferraro: The only recourse, as I understand it, is MVAC.

Mr Abols: Yes. To the motor vehicle accident claims fund.

Mr Ferraro: You claim MVAC for essential no-fault benefits.

Mr Abols: That is right.

Mr Kormos: Will MVAC assess fault for the purpose of seeking indemnification from the at-fault driver?

Mr Ferraro: Fault, in my understanding, would be a determinant if and when that person then applied for insurance again. Is that what you are referring to?

Mr Kormos: No, that is not how MVAC works.

Mr Philip: Will he be responsible for paying back what he collected from the insurance company?

Mr Nigro: I would not think so. I think you would have to deal with an over-threshold claim.

Mr Ferraro: Would MVAC have recourse against that individual for any claims? That is a question I cannot answer. Maybe you can.

Mr Abols: They would, as they would have against any individual. They could sue the individual and his licence would be suspended until he paid back the fund.

Mr Ferraro: That is right.

Mr Kormos: Wait a minute. I know that once this legislation is passed, if I do not pass the threshold, I have to be dead or damned close to it before I can be compensated for pain and suffering. So all we are talking about is the no-fault portion, and we have had no-faults in this province for over a decade now in any event.

Two uninsured vehicles and two uninsured individuals involved in an accident—

The Chair: One drunk or are they both sober?

Mr Ferraro: One smuggles drugs; the other one is a rapist.

Mr Kormos: You know that.

Mr Ferraro: No.

Mr Kormos: Let's deal with a scenario where their injuries do not meet the threshold; in other words, two broken legs, a broken back, fractured ribs and maybe a skull fracture, so they do not meet the threshold.

Mr Abols: I will not concede that they do not necessarily meet the threshold.

Mr Kormos: All right, I appreciate we are getting into the grey area where we are talking about expensive litigation to determine. Let's just say two broken legs that heal after however long broken legs usually take—I mean, boom, crack, snap, perhaps even compound. They do not meet the threshold, so there is going to be no compensation for the incredible pain and suffering that driver A undergoes.

Driver A then is entitled to no-fault benefits. He gets those no-fault benefits from the motor vehicle accident claims fund, but the other driver is identifiable. In other words, they know who he is. It is not a phantom vehicle.

Driver A collects the no-faults. As I understand the motor vehicle accident claims fund, the at-fault party on whose behalf funds are paid out has to pay that money back, failing which that

person loses his or her licence, for as long as it takes. In this case, where fault is determinable and it indeed is, let's say, 100 per cent fault on the part of driver B—

Mr Ferraro: They are both at fault because they are both uninsured and driving.

Mr Kormos: No, no, no. Uninsured has nothing to do with it. That is the problem. You have been really—

Mr Ferraro: No. My problem is I am not living in your world of superimposed intangibles.

Mr Kormos: I know that. You live in the Liberal world of insurance industry executives.

Let's get back to driver A who gets the no-faults from the motor vehicle accident claims fund. Driver B is 100 per cent at fault by traditional fault criteria. Does the motor vehicle accident claims fund look to driver B for repayment of what the motor vehicle accident claims fund paid out to driver A?

Mr Abols: Yes.

Mr Kormos: So there is the utilization of fault in the application of the motor vehicle accident claims fund.

Mr Abols: Actually, there is utilization of fault in situations where any insurer is trying to recover no-fault benefits it has paid out in terms of the fault determination. I think we are sort of jumping ahead. When you come to the section that deals with payment of no-fault benefits, there are certain priority rules which will, first of all, determine where you go to look for payment of no-fault benefits. Then there is also the collateral—well, the collateral source rule is that it be an over-the-threshold situation, so we are talking about an under-the-threshold situation. The motor accident vehicle claims fund can sue in those cases.

Mr J. B. Nixon: Setting aside those situations where there is clearly a claim for no-fault benefits, is there an application or a determination of fault to be made?

Mr Abols: If they are suing for those benefits, that determination of fault will be made by the court.

Mr J. B. Nixon: No, no. Setting aside the cases where you are above the threshold, setting aside the cases where you are dealing with the motor vehicle accident claims fund, I thought I heard you suggest that there is still a determination of fault.

Mr Abols: I should correct that. That was in the context of an over-the-threshold situation.

Mr J. B. Nixon: Okay. I am not sure that is what Mr Kormos was getting at. I think he was talking about, in the issuance or distribution of no-fault benefits, is the question of fault at issue? I do not believe it is.

Mr Abols: No. The entitlement to no-fault benefits, as the name suggests, means that fault is not at issue, no.

The Chair: He was talking about a situation with two uninsured drivers, A being not at fault, B being totally at fault. They both come out of MVAC, or whatever it is. His understanding of the current legislation is that MVAC would go after the uninsured driver to recover the benefits paid out to driver A and potentially, I am assuming, the benefits paid out to himself or herself.

1550

Mr Ferraro: Why do we not ask Mr Kormos if he can confuse us further?

Mr Kormos: No, no, you are right. As an extension of that, let's talk about the single-vehicle accident, because you guys have brought that up a whole lot. Let's talk about the single-vehicle accident, or rather, single vehicle and big tree, wherein the driver is uninsured and the vehicle is uninsured. You are telling us that that person gets no-fault benefits, notwithstanding that he or she is not insured?

Interjection: That is right.

Mr Kormos: Because he gets no-faults based on the same schedule as in the regs here.

Mr Ferraro: That is right.

Mr Abols: With the exception of income replacement, because he is convicted as a person operating a motor vehicle without insurance. Under the Compulsory Automobile Insurance Act, he will be like the drunk driver or the excluded driver.

Mr Kormos: Why?

Mr Abols: Because of the exclusion set out in the no-fault benefits schedule.

Mr Kormos: Okay. The money that is paid out on his behalf by the motor vehicle accident claims fund—does the motor vehicle accident claims fund then have a right of indemnification against him?

Mr Abols: I do not think so.

Ms Parrish: No-fault coverage.

Mr Kormos: Then why would you say that the motor vehicle accident claims fund would have a right against faulty driver B when driver A, in the first example, receives no-faults?

Mr Abols: I think I was in error initially. When I addressed that situation, I was thinking again in the context of an over-the-threshold situation. This is an under-the-threshold; there would be none.

Mr Kormos: So it is only for payments in excess of no-fault?

Mr Abols: When you are over the threshold, then everything is up for grabs, basically.

Mr Ferraro: With the exclusion of income replacement.

Mr Kormos: Income, medical rehab; no-faults.

Mr Abols: No, they do not get income replacement.

Mr Kormos: Income replacement is excluded right off the bat, right off the top, so it is only for payments in excess of the no-faults schedule for which there is any right of indemnification as against the faulty driver.

Mr Abols: I do not understand what you mean by payments in excess of the no-fault.

Mr Kormos: Pain and suffering, loss of enjoyment of life. That is about all there is left—and excess wage loss, excess economic loss, which would be available. You are saying the uninsured driver has no right for no-faults vis-à-vis wage replacement if that uninsured driver exceeds the threshold—that uninsured driver who is not concerned with that, because that only applies to the no-faults payable by first-party insurers under the regs—so an uninsured driver who passed the threshold could sue for wage loss, and if he could prove somebody to be at least partially at fault, he could expect partial if not total payment of real wage loss as an uninsured driver.

Mr Abols: Well, yes.

Interjection: If you pass the threshold.

Mr Kormos: So uninsured drivers have two standards of treatment in this scheme as well. One is for those who pass the threshold. Uninsured drivers who are dead or damned close to it are not affected by the fact that they were uninsured, whereas uninsured drivers who merely break both legs and fracture ribs are affected because they do not pass the threshold.

The Chair: For a second, go back to the example Mr Kormos used with the uninsured driver hitting a tree that jumps out in front of him. We will set aside the income replacement for a second. Assuming he breaks both legs, an arm, whatever, he has to go into some rehabilitative care. Rehabilitative care comes to, say, \$20,000,

okay? From what you are telling me, or the level of understanding I have to date, under the fund that is going to pay this out, MVAC, in fact MVAC would come back after this person at some point in time in the future to recover that \$20,000; yes or no?

Mr Abols: The answer is no.

The Chair: MVAC will not come after them?

Mr Abols: No, because they are no-fault benefits.

Mr Kormos: That is crazy.

The Chair: They are no-fault benefits.

Mr Abols: When you come back after someone, you mean undertaking litigation, and the basis for litigation must be some liability, and the basis for that liability must be a finding of fault. If you have no fault, you have no finding.

Mr J. B. Nixon: These guys are into the stratosphere. I am still trying for just the basic principle. If an injured party sues because he believes he exceeds the threshold and he does establish that, and he has been collecting no-fault benefits, does part of his suit seek to recover repayment of the no-fault benefits from the third party?

Mr Abols: If they are in an above-the-threshold situation?

Mr J. B. Nixon: If they are above the threshold.

Mr Abols: Yes, it will.

Mr Kormos: So the minister's parliamentary assistant, having heard what he has—

The Chair: Rick Ferraro, the Liberal member from Guelph.

Mr Ferraro: The great riding of Guelph.

Mr Kormos: Great people in Guelph.

Mr Ferraro: Yes, they are; very knowledgeable.

Mr Kormos: If—

Mr Ferraro: He is lost for words.

The Chair: You have got him stumped.

Mr Ferraro: He is tiring, Mr Chair.

The Chair: Half an hour to go.

Mr Ferraro: He is tiring.

Mr Kormos: I am not going to dispute how great they are in Guelph.

Mr Ferraro: That is a good move.

Mr Kormos: But, like everybody, their judgement occasionally lapses.

Having heard what you did—and again, quite frankly, I am interested in these sorts of breakdowns, in these schematics, almost, of

what happens, because they are not going to happen every day, they are not going to be the norm, but they are certainly well within the realm of possibilities.

Having heard what you did, and I am particularly interested in the fact that it is one of the first times it has ever been discussed, the fact that in a beyond-threshold case, where basically old rules survive, then fault is a criterion even in payment, ultimate payment, of the no-fault provisions. Wait a minute. I see Ms Parrish is concerned about that, and that is why I want to straighten this out right here and now, because the advice we have gotten is that if you meet the threshold and you have collected no-faults from your own insurer, just like we do now, but the faulty party, through his insurer—

Mr J. B. Nixon: Did anyone see Fawltz Towers?

Mr Kormos: I have seen faulty legislation, and this is the penultimate in faulty legislation.

The faulty party pays the damages, pays the excess economic loss and as well pays the no-faults. That is my understanding of what these gentlemen have been telling us about the effect of this legislation in that scenario.

Mr Abols: You are talking now about an over-the-threshold situation.

Mr Kormos: Yes.

Mr Abols: When you say that the party receives no-fault benefits, economic loss and pain and suffering, the no-fault benefits that the party is suing for he receives from his own insurers. It is first-party delivery.

Mr Kormos: Why are they suing for it? Because the insurance company has short arms and deep pockets and it hates paying this money out.

Mr Abols: It is part of the overall loss that they have sustained, at least initially, but you will see when we look at the collateral source rule we have changed that as well. I will not get into that now. What was your follow-up from that?

Mr Kormos: Does the faulty party, through his or her insurer, pay the no-faults or not? That is to say, granted, one has received the no-faults from one's own insurer, but then, in the final analysis, when all is said and done, is that first-party insurer compensated by the insurer of the faulty party for what that first-party insurer has paid out in terms of no-faults?

Mr Abols: If it is an over-the-threshold situation, then that insurer, since it has incurred a liability to pay no-fault benefits, will then look to

the faulty party's insurer for indemnification up to the extent of that faulty person's liability.

Mr Kormos: Of what they paid out.

Mr Abols: Up to the extent of their liability.

Mr Kormos: Dependent upon the degree of liability and on the extent of coverage.

Mr Abols: Yes.

Ms Parrish: Yes. It is a loss transfer.

Mr Kormos: Okay. So let's assume that the coverage was sufficient to cover the whole claim, and let's also assume that you have got 100 per cent liability, simply because it makes a somewhat complex situation a little bit easier. You are telling me that in that situation, the no-faults stop becoming no-faults, that they really are not a first-party liability in the final analysis, that they are paid by the third-party insurer and they are paid on the basis of fault, that the medical rehab expenses—

Ms Parrish: No. They are not paid on the basis of the fault. They are paid notwithstanding fault. However, in the case of a threshold claim, the first-party insurer may transfer it through loss transfer to the third-party, or the tortfeasor's, insurance company, to the extent of the liability limits of the claim.

Let's say we have an example where there is a \$1-million policy. The courts make the determination that the total damage suffered by this person is \$750,000. The first-party insurer has paid \$250,000 worth of no-fault benefits. The tortfeasor's insurance will pay \$500,000 in a direct lump sum award, assuming it has not been structured, because that—

Mr Kormos: The opposite.

1600

Ms Parrish: The individual has already got the \$250,000. So they get a total of \$250,000. The first-party insurer then transfers, by loss transfer rules, by indemnification, to the tortfeasor's insurance company, so that the tortfeasor's insurance company, if there is sufficient room within its liability limit, ultimately takes the entire cost, but the payment is on a no-fault basis. For example, the person's right to receive those benefits is independent of any determination of fault, except in these rare cases of impaired drivers or whatever.

Mr Kormos: More accurately, the receipt of those benefits is on a no-fault basis.

Ms Parrish: That is right, the receipt.

Mr Kormos: But the payment of them in an over-the-threshold case is on a fault basis, because the faulty party ultimately pays them.

Ms Parrish: There is a loss transfer.

Mr Kormos: Is that in effect not a payment of that number, whatever it might be, \$200,000, whatever the gross payout was of no-faults for the first-party insurer? It is ultimately paid out by the third-party insurer on the basis of fault.

Ms Parrish: Yes. It is not paid out; it is transferred.

The Chair: Okay, I am going to call the question on the amendment. Shall the amendment carry?

Motion agreed to.

The Chair: Same vote. Shall subsection 3, as amended, carry?

Mr Kormos: One moment.

The Chair: We dealt with 5a and 5b and 5b was deleted. We have to go back to 2a because you had a policy question for Mr Ferraro. So let me finish off with subsection 3. Shall subsection 56(3), as amended, carry? Same vote.

Going back, because we said that we would stand down subsection 2a, in the middle of page 29, you had a policy question for Mr Ferraro, Mr Kormos.

Mr Ferraro: My apologies for having to leave the room for a short period of time.

Mr Kormos: What does that mean, Mr Ferraro?

Mr Ferraro: It means when nature calls one must answer. Oh, you mean 2a.

Mr Kormos: What does this subsection mean? Either you know or you do not. If you do not know—

Mr Ferraro: Which subsection are you referring to?

The Chair: Mr Kormos is searching for his policy question and he is hoping that you will give him some help here.

Mr Kormos: Subsection 56(3) of this amendment.

The Chair: It is this one right here, 2a. He had a policy question. He cannot remember it at the moment. He is hoping that your explanation will revive his memory.

Mr Ferraro: Fortunately, I can hang my hat on the fact that I am not a lawyer and I will ask Ms Parrish to respond, or Mr Abols. Somebody should respond.

Mr Abols: I think Mr Nigro explained that this again simply reinforces the excluded-driver provision in the policy that underlies that position. It simply says that if you are an excluded driver and—you are victimized by an

excluded driver, there is no recovery under the uninsured or unidentified coverage for that vehicle. So it is dealing with those two standard endorsements of the standard policy.

Mr Kormos: In the transference of liability on to the motor vehicle accident claims fund away from the insurer, I think once again—no, you transfer, other than for the no-faults.

Mr Abols: Yes.

Mr Kormos: Is that what was intended?

Mr Ferraro: Yes.

Mr Kormos: Okay. What deliberations took you to that point?

Mr Ferraro: Extensive ones.

Mr Kormos: What deliberations, what other considerations were there? What options were considered by the ministry?

Mr Ferraro: I really cannot divulge the exact discussions about that, because essentially it came in from policy and—

Mr Kormos: When? At the onset of this?

Mr Ferraro: I am not sure what that has got to do with the final draft.

Mr Kormos: I will tell you what it does, Mr Ferraro, and I know you do not believe what—

Mr Ferraro: That is like saying, “You made a decision, but what were the other decisions you could have made?” I would sooner deal with the decision.

Mr Kormos: The fact is that we are seeing a whole bunch of modest vacillation here when we look at the amendments that were filed at the beginning of the week, or at least introduced at the beginning of the week.

Mr Ferraro: If the dog would not have stopped to smell, he would have caught the rabbit.

[Failure of sound system]

Mr Ferraro: —obviously considered maintaining the present system, which we let out the window very quickly, and ended up with this particular suggestion, which I am sure Mr Kormos fully endorses.

Mr Kormos: No. We oppose that. Either you are not familiar with what indeed transpired or you are not about to tell us; which of the two?

Mr Ferraro: Probably both.

Mr Kormos: How could you tell us if you are not familiar?

Mr Ferraro: I could be vaguely familiar, but not entirely.

Mr Kormos: Would that rank with rhetorical comprehension?

Mr Ferraro: Yes.

Mr Kormos: What does rhetorical comprehension mean?

Mr Ferraro: Nonsense.

Mr Kormos: Rhetorical comprehension means nonsense?

The Chair: Shall subsection 56(2)(2a) carry? Same vote.

Shall section 56, as amended, carry? Same vote.

Section 56, as amended, agreed to.

Mr J. B. Nixon: I suggest that we go back, since there was a section that we set aside this morning, section 47, and revisit that.

The Chair: That was 208, correct?

Mr Ferraro: With respect, Mr Chair, the ministry would like to deal with that tomorrow, if we could, because we are just getting some further elaboration on that.

Mr J. B. Nixon: Could we take a five-minute break? I know legislative counsel is working and may be able to resolve it today.

The committee recessed at 1608.

1615

The Chair: I recognize a quorum. I call the meeting back to order. We still do not have the necessary wordings, so I am going to suggest we

stand down section 208. Mr Kormos, do you have brief statement?

Mr Kormos: Yes, please. I am obviously quite pleased to see section 208 stood down now. We are at the point in discussion where we are at consideration of section 231a, which is very much the heart of this whole bill. I am asking the committee that it hold down consideration of—I am seeing if there is anything significant—basically 231a until the commencement of the afternoon sitting of the committee tomorrow. I am confident there will be enough. The reason is that I can be here if need be, but for me to be here would necessitate not attending to another similarly important matter.

The Chair: Okay. If I can just take it by consensus that we are going to stand down discussion of section 231a. With your permission, Mr Kormos, we could start with section 231b in the morning and move on from there.

Mr Kormos: Yes. The next section.

Mr J. B. Nixon: We could do 231a today. We are in the television room tomorrow.

The Chair: That is immaterial. We are going to stand down 231a, start tomorrow with 231b and work our way forward. The committee stands adjourned until 10 o'clock tomorrow in room 151.

The committee adjourned, at 1617.

CONTENTS

Wednesday 14 February 1990

Insurance Statute Law Amendment Act, 1989	G-1055
Afternoon sitting	G-1073
Adjournment	G-1097

STANDING COMMITTEE ON GENERAL GOVERNMENT

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Legislative Assembly of Ontario

Standing Committee on General Government

Insurance Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Thursday 15 February 1990

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

CONTENTS

Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 15 February 1990

The committee met at 1105 in room 151.

INSURANCE STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

The Chair: I recognize a quorum and apologize to the television audience for the delay. The snowstorm out there caused most of us to take anywhere from an hour and a half to two hours longer than we normally take to get in, even those individuals who live in "the good city of Metropolitan Toronto."

We are going to pick up on clause-by-clause consideration of Bill 68 dealing with section 231b of the act, on page 31. Mr Nixon has an amendment.

Mr J. B. Nixon: I am going through my many files, Mr Chairman, if you could bear with me for one minute.

Section 57:

The Chair: Mr Nixon moves that section 231b of the Insurance Act, as set out in section 57 of the bill, be struck out and the following substituted:

"(1) The damages awarded to a person in a proceeding for loss or damage arising directly or indirectly from the use or operation of an automobile shall be reduced by,

"(a) all payments that the person has received or that were or are available for no-fault benefits and by the present value of any no-fault benefits to which he or she is entitled;

"(b) all payments that the person has received under any medical, surgical, dental, hospitalization, rehabilitation or long-term care plan or law and by the present value of such payments to which he or she is entitled;

"(c) all payments that the person has received or that were or are available for loss of income under the laws of any jurisdiction or under an income continuation benefit plan and by the present value of any such payments to which he or she is entitled; and

"(d) all payments that the person has received under a sick leave plan arising by reason of the person's occupation or employment.

"(2) Payments or benefits received or that were, are or may become available to a person under the Workers' Compensation Act shall not be applied under subsection (1) to reduce the damages awarded.

"(3) A reduction made under subsection (1) does not apply for the purpose of determining a person's entitlement to compensation under subsection 8(2) of the Workers' Compensation Act.

"(4) A person who has made a payment or who has a liability to pay a benefit described in clause (1)(a), (b), (c) or (d) is not subrogated to a right of recovery of the insured against another person in respect of that payment or benefit.

"(5) The Workers' Compensation Board is not subrogated to a right of recovery of the insured against another person in respect of a payment or benefit paid by the Workers' Compensation Board to the insured or in respect of a liability to make such payment or benefit.

"(6) This section applies to damages awarded for loss or damage arising directly or indirectly from the use or operation, after 23 October 1989, of an automobile."

Mr J. B. Nixon: The rationale is that the amendments to the collateral source rule are designed to accomplish the following:

1. Clause 231b(1)(b) is amended to clarify that all first-party benefits received as a result of bodily injury suffered in an automobile accident are included in the collateral source calculation. This would specifically include payments on account of hospitalization, rehabilitation or long-term care.

2. Subsection 231b(2) ensures that a worker who has elected to sue will not have workers' compensation benefits which he or she did not claim deducted from his or her tort award, even though they were available. This gives workers a chance to recover from the WCB or under Bill 68.

3. Subsection 231b(3) clarifies the scope of the collateral source rule. The rule should not be taken into account by the Workers' Compensation Board when determining how much a worker is entitled to under the top-up provision in subsection 8(2) of its legislation.

4. Subsection 231b(4) is amended to clarify that automobile insurers will not be allowed to

make a subrogated claim for accident benefits. Automobile insurers will thus be treated consistently with other first-party benefit payors. Subsection 231b(5) operates in a similar fashion vis-à-vis the Workers' Compensation Board.

5. Subsection 231b(6) has been amended to clarify that the collateral source rule does not apply to persons who are injured in an automobile accident before 23 October 1989 and also clarifies that the rule does not affect the collateral source of the injured person who exercises a subrogated claim in respect of the same accident.

If I may, I have a couple of questions.

The Chair: Please, and then I have Mr Kormos.

Mr J. B. Nixon: I guess to the parliamentary assistant, Mr Ferraro: It is my understanding that section 231b, which is a modification of the collateral source rule, was a recommendation of Mr Justice Osborne in his report.

Mr Ferraro: That is right, Mr Nixon. It is one of the many Justice Osborne recommendations that are in this bill.

Mr J. B. Nixon: The second question is: Just for clarification, this collateral source rule will apply when you are calculating damages if there is a lawsuit in tort and if there is an attempt to determine entitlement under the no-fault benefits. So it applies on the whole program?

Mr Ferraro: Yes. The collateral source rule encompasses not only the no-fault benefits, but indeed those tort actions actually involving the court.

Mr J. B. Nixon: Thanks. I may have questions later.

Mr Kormos: I have a whole whack of questions to Mr Ferraro about this. I am intrigued about his familiarity with the Osborne report. He obviously read the expurgated version of it, perhaps the Reader's Digest version or perhaps the Classic Comics version of Osborne, because he obviously does not have a very clear or comprehensive understanding of what Osborne recommended. What Osborne very emphatically told this government is, "Don't go to threshold," which is what this system is all about. This system is about making sure that people do not have a right to compensation for pain and suffering.

I am interested in that it appears that this is one of the few parts, if not the only part, of this bill that is retroactive. I am interested in the purpose of the retroactivity and the design behind the retroactivity to 23 October 1989.

Mr Ferraro: I will have Ms Parrish comment, but let me just say briefly that indeed I have read Osborne. I acknowledge that we have not accepted everything that any one study or individual has suggested we embody in the legislation, but having read Osborne, I am sure the member will know that while we did not accept a lot of them, we accepted many of them. For example, we did accept Osborne's suggestion that we do not go to a public form of auto insurance, which of course is something that Mr Kormos advocates.

Mr Kormos: That is right.

Mr Ferraro: Ms Parrish can respond to—

Mr Kormos: No. Let me interject at that point, because you did not even cost a public alternative. We know that the government has backed off on its criticism of the public systems, because we know that this Liberal government's Liberal confrères in Quebec operate a public system. Indeed, the Liberals in Quebec campaigned on a public system back in 1970. We know that this government has been very specific and very careful about its comments about public systems, because as I say, its Liberal brothers and sisters in Quebec run a public system and ideologically it is not offensive to Liberals there.

I note that the government's criticism of public systems has been reduced to: (1) the considerable startup cost, which is what Mr Justice Osborne's concern was, and he was not permitted as a part of his inquiry to address the element of startup cost; (2) the matter of dislocation. What Mr Ferraro, the Liberal MPP, member of the provincial Parliament for Guelph, parliamentary assistant and head spokesman for Murray Elston, minister of David Peterson, talks about is, again, the dislocation. He says, "Oh no, not all 40,000 workers," because he acknowledges that surely some, perhaps most, of those 40,000 workers would not suffer any dislocation.

But what a wonderful opportunity they had, while Kruger was sitting with the Ontario Automobile Insurance Board, to talk about startup costs. In view of the fact that the taxpayer and drivers and victims in Ontario are going to be putting almost \$1 billion, if not \$1 billion, into the insurance industry in the first year alone of the operation of this bill, one wonders if the embarrassment to the government that would have flowed from an inquiry into startup costs would have revealed that this \$1 billion, or even less, could have been more effectively spent by way of startup costs for a public auto insurance system that provides insurance fairly and affordably.

We are not so naïve as to believe that there are not going to be increases in any system, but we know that notwithstanding the increases that have certainly taken place in the western systems, there are good no-fault benefits. At the same time, people have retained the right to be compensated for their pain and suffering and the loss of the enjoyment of life; the right to go into a courtroom, into that forum, to pursue that compensation if need be; a right that has been denied by the Liberals here in Ontario, because they have no intention of letting injured victims—broken legs, broken backs, fractured ribs, broken skulls—be compensated for pain and suffering. So you take that message to David Peterson, Mr Ferraro.

I would be pleased to hear from Ms Parrish about the rationale for the retroactivity of this particular part of the bill.

Mr Ferraro: I do not want to totally get off topic. Let me just clarify a couple of things. Notwithstanding the fact that I do not accept many of Mr Kormos's conclusions, Justice Osborne was not, to my understanding—and I ask anybody in the room to clarify this for me—precluded from doing a more extensive study of public auto insurance.

Mr Kormos: Oh come on, Rick, read the terms of reference. Get off it.

Mr Philip: Read the terms of reference. Holy cow.

Mr Ferraro: I suggest to you that if he had wanted to do that, he could have. Having said that, he did make reference to—

Mr Philip: That is bull, that is absolutely wrong.

Mr Ferraro: You will have your time.

Mr Philip: Look at the terms of reference. He was stopped from doing it.

The Chair: Order. Mr Ferraro.

Mr Ferraro: Thank you, Mr Chairman. I would appreciate the indulgence of the committee members for a minute. They can have their time.

He did reference certain significant costs affiliated with public auto insurance in his report, but that is, I suggest, a topic for another day. I would ask at this juncture—

Mr Kormos: It will be. In the next election campaign it will be a topic, I tell you that.

Mr Ferraro: I look forward to that day.

I ask Ms Parrish if she would be kind enough to address the specific question of Mr Kormos

dealing with the retroactivity of the collateral source rule.

Mr Kormos: I think you are better off having Ms Parrish take the floor now, Mr Ferraro, before you get in too deep.

1120

Ms Parrish: Treading where angels have feared to walk, strictly speaking, the current provision of the bill is not retroactive. Retroactivity means that it applies to something which has occurred in the past for which there was no notice. The original drafting of this section in the September version of the bill was retroactive in that it would have applied to causes of actions which arose before the legislation was introduced and would have had a truly retroactive effect. Many people were critical of the retroactive effect in that they said that they understood why the rule against double recovery should be changed, that the rule that would eliminate double recovery should come into place but they did not feel it was fair to have it retroactive. So the government, when introducing Bill 68, said that it would be effective only to incidents that arose after the first reading of the bill so that everyone would have appropriate notice that the rules would change and would conduct themselves accordingly. So although the bill is effective on the date of introduction, Bill 68 is not truly retroactive.

The reason this provision does go into effect before the rest of the bill, which we assume will be in June, is that it was felt that this independent tort reform should proceed as it seemed to have the consensus of a large group of people. For example, the Canadian Bar Association and others had written in saying that they favoured the introduction of the changes of collateral source rule, and since double recovery was seen to be wasteful, in Mr Justice Osborne's terms, it was thought that it should be introduced as soon as possible.

Mr Kormos: I am particularly concerned about clause 231b(1)(a), and that is to say "all payments that the person has received or that were or are available for no-fault benefits." What this does is reduce the damages payable to any person by no-faults that he has received or that he was eligible for, whether he received them or not. This would appear to certainly punish the person as a result of not knowing what was available to him. As I understand it from people who are involved in this in Ontario on a daily basis, this happens regularly, that people do not apply for their no-faults, do not file the appropriate requests for their no-fault benefits

right now, and are therefore not in receipt of them. So what had happened here is that a person would not get them in the final analysis. We have been talking here about people who have passed the threshold?

Ms Parrish: We assume that they have passed the threshold or they would not be getting—

Mr Kormos: Damages, yes, because we are talking about people who are dead or damned close to it. That is what you have got to be before you pass that threshold. I mean, broken legs do not count, broken backs do not count, fractured skulls do not count, fractured ribs do not count. You have got to be dead or damned close to it before you can even think about being compensated, before you can even think about receiving damages. But the person who, by oversight or through not being familiar, through not being able to follow the fine print in view of the virtual complete absence of any real consumer protection in this province, by virtue of not being able to follow the fine print or by virtue of being denied a right to information or material in his or her first language, does not receive it would be deemed—obviously they were or are available to that person and they would be obstructed. Am I correct in that understanding?

Mr Abols: I would make two observations. First of all, this is the current law and, second, you are talking about an over-the-threshold situation, so certainly that person would have legal counsel. One of the first things a person might do, as was suggested the other day, is call his lawyer. It is the lawyer's obligation then to advise the client of what benefits he is entitled to and ensure that he receives those benefits. Otherwise there may be a case of professional negligence as far as the lawyer's handling of the case is concerned.

Mr Kormos: It does not address the question, because you are saying if a lawyer is involved, a lawyer will do this. What you are saying is that the person who, for whatever reason, neglects to apply for his or her no-faults from his or her own insurer is similarly and subsequently denied them in the final analysis.

Mr Abols: The section does encourage people to claim their no-fault benefits, because yes, that is the risk they run, but the point also is that if you did not have a provision like that, then the rule could quite easily be subverted or it is open to abuse. If you do not deal with the issue of benefits that were available and that the person should have claimed, he can go through the tort action and then come back to the no-fault insurer

and, under the terms of the contract, claim those benefits. So then again we have overcompensation and double recovery.

Mr Kormos: Why could legislation not be written that indeed deducted from any damage award the no-fault benefits actually received? That would be simple enough, and certainly fair. There is nothing about what the Liberals are doing here that constitutes fairness to consumers and drivers and victims, so maybe I am expecting too much from you, Mr Ferraro, or more important, maybe I am expecting too much from David Peterson and the insurance industry. Surely you fellows would have no difficulty writing up a clause or a little set of clauses that deducted from a damage award any no-fault benefits actually received and that prohibited someone from benefiting twice, right? Lawyers have a phrase for that. You guys surely know what it is.

Mr Abols: Again, it addresses the issue of overcompensation, that is correct, an issue that Mr Justice Osborne identified and which we have responded to in this legislation.

Mr Kormos: Wait a minute. I am still talking about the fact that you guys should have no difficulty writing up a bill that merely indicated that no-faults actually received were to be deducted from any damage award, and similarly, that a person could not go to the well twice.

Mr Abols: We could write that, but that does not address the issue of overcompensation, because, as I suggested, in that situation you still have the ongoing obligation under the contract where, after the tort action is concluded, the person could go back to the no-fault insurer and claim those benefits, which have already been paid to him, as a result of the tort action, in the damage award. So you have to take into account benefits that might become available in the future.

Mr Kormos: I was hoping you would be more creative, more imaginative. I am asking the parliamentary assistant if that was the policy intent here.

Mr Ferraro: Mr Kormos, I apologize. I was talking to the chairman about a technical matter. Could I ask you to briefly reiterate?

Mr Kormos: Paragraph (a) here on the effect of no-faults you have either received or you might have received.

Mr Ferraro: Received or might have received.

Mr Kormos: I am paraphrasing when I say "might have received."

Mr Ferraro: Dealing with the collateral source rule, the intent is indeed not to have a double payment. I ask Ms Parrish to clarify this if I am leading anyone astray, but in the event where there is a tort action—someone crosses the threshold—the second part of that paragraph would preclude someone who is in tort receiving a settlement and then having access to come back and ask for or receive the no-fault benefits. The intent is to negate that eventuality.

Mr Kormos: Fair enough. Why does the legislation not give effect to that intent and why are the draftspersons not requested to do specifically that? Why instead is there inherent in paragraph (a) punishment for that person who, for whatever reason, might have overlooked his or her right to no-faults and in fact, although he did not receive them, and because of the special circumstances, may not receive them subsequent to the damage award—

Mr Abols: Mr Kormos, there is nothing in it that precludes them from doing just that. What it does preclude is the court assuming that they have done that or will do that, and therefore the tort award has to reflect the fact that they have this entitlement to no-fault benefits under the contract. If you have not claimed those no-fault benefits by the time the issue is determined by the court, the court will assume that you have received those no-fault benefits. If you have not, then by all means, you should go back to your insurer and claim those no-fault benefits.

1130

Mr Kormos: Then what happens to what Ms Parrish was talking about yesterday about the loss transfer rules?

Mr Abols: That has nothing to do with the insured, that is an issue—

Mr Kormos: It has to do with insurers, and it has to do with who is at fault and who is not at fault.

Mr Abols: But that will not affect the insured himself in terms of his entitled to those no-fault benefits.

Mr Kormos: It will affect the transfer of funds and what the insurer says about how much insured person X costs him and how much insured person Y costs him in terms of money paid out, will it not?

Mr Abols: Between the insurers, yes.

Ms Parrish: It may affect rating.

Mr Kormos: Yes, exactly.

Ms Parrish: That is why the transfer occurs, because you want to increase the amount of

money paid out against the bad as compared to the good drivers, but it makes no difference to the entitlement of the insured person. They are guaranteed under the contract whether there is loss transfer or there is not loss transfer.

The Chair: Let me ask a question from a different point of view. I will give you the scenario that Mr Abols identified in terms of someone who gets to court and has not claimed the no-fault benefits. There is an award. Is there a time frame under which an individual has to access any of the no-fault benefits?

Ms Parrish: Two years.

Mr Kormos: What about the insurer who refuses to pay no-faults or who interrupts them prematurely?

Mr Ferraro: Do you have specific cases in mind?

Mr Kormos: No. They lack the charitableness that a private system is never going to be able to incorporate, because their job is to collect the maximum amount of premiums and pay out the least amount of compensation. That is what the private insurance corporations are all about, in contrast to what some of their flacks have said here in the committee when they come up here, trying, as I have said before, to look like Mother Teresas, to display some sort of conversion they have undergone. Is a person who has been denied no-fault benefits by an insurer not then similarly in a position of having been eligible for no-fault benefits if indeed they were wrongly denied?

Mr Abols: They are eligible for no-fault benefits, that is correct. If you are asking what that person can do then, vis-à-vis his own insurer, about the no-fault benefits, he can submit the dispute to the alternative dispute mechanism we have set out; that is, have a mediator mediate the dispute and then finally take it to arbitration or, after the mediation, sue his own insurer for those no-fault benefits.

Mr Ferraro: If there is an abuse, the insurance commissioner will deal with the insurance company accordingly, and that is by way of fine and—

Mr Kormos: You talk about suing again. I am wondering if the Minister of Financial Institutions' statement is adopted by the parliamentary assistant. The Minister of Financial Institutions says that more accident victims could sue under the proposed law. That is what this headline from this morning's *Globe and Mail* says, "More Accident Victims Could Sue Under Proposed Law, Elston Says." I wonder if we could file this with the clerk.

Mr Philip: I want to see this. I do not believe this. This cannot be true.

Mr Kormos: In view of what you just said, I am wondering if Mr Ferraro agrees with what Mr Elston says, "More accident victims could sue under proposed law." Do you agree with the minister in that regard?

Mr Ferraro: I cannot comment because I have not read the article, quite frankly.

Mr Kormos: That is what it says. Mind you, the Globe and Mail might have erred.

Mr Ferraro: Nine times out of 10, when the minister says something, he usually means it.

Mr Kormos: "More accident victims could sue under proposed law," it says. Oh boy, I do not know. What is going on here? How come the minister says more accident victims could sue under proposed law?

Mr Ferraro: Maybe you should ask either the reporter or the newspaper who put in the headlines, or indeed, and you will have opportune time, the minister himself.

Mr Kormos: Let us have Mr Elston here to talk about this. Can he get here this afternoon? This is a remarkable statement by Mr Elston, that more accident victims can could sue under proposed law.

Let me put this to you, Mr Ferraro. Tell us how this can be, because he says "could," not "have to." I am inclined to the view that as a result of this new legislation, more accident victims will have to sue their own insurer. They will have to sue their own insurance company, and that was the experience in Michigan, but "could sue" implies that this permits more people to sue when in fact you know darned well that over 95 per cent of all innocent injured victims are being denied the right to compensation and the right to even sue for it if they have to. So what gives here? How come the minister says more accident victims could sue under proposed law? Will you please tell us, Mr Ferraro, Mr Parliamentary Assistant?

Mr Ferraro: Mr Kormos has made the suggestion a number of times that 95 per cent of people are denied the right to compensation. That is factually incorrect. They do qualify for the no-fault benefits, which is a form of compensation.

Mr Kormos: Pain and suffering, loss of enjoyment of life.

Mr Ferraro: But you do not exclusively indicate that when you make that broad, sweeping statement, and we understand why.

Mr Kormos: We have no-faults now. Come on, tell the truth.

Mr Ferraro: Finally, I suggest that Mr Kormos will have opportune time to ask his questions of the minister himself, certainly when the House gets back, and indeed, if he wants to spend a certain amount of time dealing with a single article in the newspaper, that is his prerogative, but I am not sure how worth while it is for the committee.

Mr Kormos: That is not very comforting. Obviously you were not scripted for that one, and if I were you I would be mad as hell at the minister for not sharing his comments with the press with you, because obviously you were not scripted for it. You obviously were not prepared for it. You may well be this afternoon. It has been filed now, and maybe we can talk about it more this afternoon, but I say it is pretty shameful that your response is as pathetic as it is.

Mr J. B. Nixon: Mr Chairman, are we not supposed to be talking about the various sections and provisions of this bill, and not newspaper headlines?

Mr Kormos: Let's talk about what Murray Elston has to say. Why is he not here to talk about it?

Mr Philip: This does raise the essential problem that I have been concerned about for some time; namely, the minister seems to be hiding. Mr Ferraro says, "You can ask questions of the minister, don't ask me these questions." The fact is there are a lot of questions we wanted to ask of the minister and I am wondering when we are going to have an opportunity to ask the minister.

I had assumed from Mr Ferraro's position and the position of Mr Nixon that at least we would be able to debate this with the minister in the House. Then yesterday in the hallway I said to Mr Ferraro, "I guess you'll be glad that you don't have to answer these questions in the House, that the minister will be taking the heat," and he said: "Don't count on it. I think I'm going to be carrying the bill in the House." If the minister is not carrying the bill in the committee and he is not going to carry the bill in the House, how are we going to get to question him on these issues?

You know, the rationale that they have constantly yelled in the press, that Elston has been making in these statements—although he is afraid to come into the committee and be questioned on these statements—and that his friends the insurance companies are making is that we are going to save a lot of money because

there is going to be less litigation. Here we have a statement by the minister now saying people are going to have more opportunity to sue, not less.

Mr Kormos: And that is an outright lie.

Mr Philip: I would like to know from the parliamentary assistant to the minister, since he says we are going to have an opportunity to question Mr Elston, the minister, will Mr Elston be leading the bill in the House so that we can have a debate with the minister in the House, so that in committee of the whole House we can ask him questions? He has played the game of hide-and-seek, a disappearing act, and refused to appear in this committee so that we can ask him questions. Will he at least be available in the House so that we can ask him these questions?

Mr Kormos: The game he is playing is, if you are going to lie, tell a big lie.

Mr Ferraro: First, let me say that if anyone knows anything about Murray Elston, it is that he is certainly not afraid to accept responsibility and deal with very tough issues. To suggest otherwise is just categorically wrong.

Mr Kormos: Ha ha. When in the last four weeks? Where is he hanging out? Is he in the bunker?

Mr Ferraro: I would say in response to Mr Philip that indeed I cannot remember the exact detail of the conversation, but I do recollect saying—and quite frankly I hope that the minister will allow me to carry the bill in the House, because I think that is my job as parliamentary assistant.

Finally, let me say that unless somebody can enlighten me, I do not know of any election call and indeed opportunity will be infinite vis-à-vis questions that can be asked of the minister on a number of occasions.

1140

Mr Philip: The parliamentary assistant, even though he has only been a member for a short period of time—

Mr Ferraro: Sometimes it seems too long.

Mr Philip: —will realize that the opportunity to ask a minister in-depth questions comes in committee. It is either a committee such as this or committee of the whole. If the minister is going to hide, as he has from this committee, from the people who are making presentations and asking legitimate questions, and then he is going to hide in the House by not being there for committee of the whole, you know perfectly well that we are not going to have an adequate opportunity.

Mr Ferraro: That is not factual.

Mr Kormos: Is it true he is in the witness protection program?

Mr J. B. Nixon: Where is Bob Rae? I want to see Bob Rae.

Mr Philip: Bob Rae did not introduce this legislation. Bob Rae does not have to answer to the people for this legislation. If Bob Rae had had the position, Bob Rae would have been there. At least Bob Rae is, on invitation, helping a government to form a democratic system, as is the Liberal member Mr Flis.

Mr J. B. Nixon: I just asked where Bob Rae was.

Mr Philip: It shows that he has more respect for the democratic process than Murray Elston does, who is afraid to answer questions.

Mr J. B. Nixon: Murray is not available to answer questions is what I understand.

Mr Kormos: To Mr Ferraro, in view of his last comment, is Minister Murray Elston acquiring a new identity under some witness protection program? Will we ever see or hear from the Murray Elston we know?

Mr J. B. Nixon: I think we are getting out of order.

The Chair: I am going to call the question on the amendment. All those in favour—

Mr Philip: No, I had questions on the amendment and I was on the list; you knew that.

Mr J. B. Nixon: We have not heard any questions.

Mr Ferraro: You can tell it is the last day.

Mr Kormos: It is the last day you want to talk about it.

Mr Ferraro: That is not true. I am always available.

Mr Kormos: We are ready to come back next week. Let's carry on next week. Let's come back next week.

Interjections.

Mr Kormos: Come on, you want to do it next week? We will be here next week; come on. Carry on.

Mr J. B. Nixon: I thought you had a question, Mr Philip.

Mr Kormos: You are afraid to hear from the public. You are afraid of clause-by-clause. Boy, you guys are something.

Mr J. B. Nixon: There is no point in giving Mr Philip time to ask questions, because Mr Kormos just shouts and screams.

Mr Kormos: Pathetic. You do not want to hear from the public.

Mr Philip: At least Mr Kormos is here, which is more than Mr Elston is.

When I look at this amendment and then I look at the original section in the bill, I notice that one of the differences is in subsection 231b(2) of the original amendment in this bill it says, "Benefits received under the Old Age Security Act (Canada), including amendments thereto, shall not be applied under subsection (1) to reduce damages." You have now introduced an amendment that wipes out that section. Does that mean old age security benefits in fact will be used as—

Mr Ferraro: No.

Mr Philip: Then why was the exception in the first amendment but it is not in this one?

Mr Ferraro: I will ask Ms Parrish or Mr Abols to respond.

Mr Abols: It was put in there out of an abundance of caution but without the realization that actually it created more problems than it corrected. In fact, it did just the opposite, because the language that you have in clause 231b(1)(c) when you talk about payments under income continuation benefit plans or payments available for loss of income has been judicially considered. It is clear in the case law that they do not include pension benefits under OAS or CPP.

When you introduce subsection 231b(2), however, then you put into doubt that case law and then the implication is, "Maybe the Legislature intended something different and maybe those income continuation plans now include pension plans," and that is clearly not the case. We want to preserve the status quo, which is that the pensions like OAS and CPP are not taken into account in this context.

Mr Philip: But surely under the way you originally had it you remove any doubt. You say old age security, as I read it.

Mr Abols: On the contrary, though, it is a principle of statutory interpretation that if you do deal with an issue specifically, then you negate what you already have there, as a result of the case law and the language that you used in subsection 1. It is a principle of statutory interpretation. Really, it was a technical error to have that section in there because we were correcting a problem that was not there and, in effect, creating a problem.

Mr Philip: I am not a lawyer but I did chair the standing committee on administration of justice for a few years. I noticed legislation coming in at that time, under the Conservative government,

that in fact would specify and spell out just in case, at some point, case law might make a change of direction or might not be entirely clear. To avoid unnecessary litigation, they would spell out, "X is not included." That is what you have done under subsection 231b(2).

It is very interesting that in the preamble to this, some of the explanation by Mr Nixon, there is no mention of this. Whenever there is no mention of something and it is kind of slipped in or slipped out, I guess I get suspicious because I have seen governments do that as a way of putting one over on the public. I really question whether leaving it out now is not just one more way of this Liberal government's taking away more benefits.

Mr Abols: I assure you this is strictly a technical amendment and it really is a case of more actually being less. It is on the advice of the legal services branch of the ministry that this change has been made.

Mr Philip: Mr Chairman, as you know, I had asked and moved an amendment, which the Liberals used their majority to defeat, that Mr Cheng be here. Now I am going to ask questions that I think probably you are not going to be able to answer but that, if Mr Cheng had been here, he would have been able to answer. Maybe that is why you did not want him here. I want to go through each of the items that you are excluding, that you are taking away, that you are taking out of the pockets of the—

Interjections.

Mr Philip: Are you going to call order? I am addressing the Chair.

The Chair: I've got you. You want someone to go through—

Mr Philip: It would be useful for the person who moved the amendment to actually be listening.

The Chair: Through the chair, you were looking for someone to take you through the exclusions in the proposed amendment. I would ask either Mr Ferraro or legal counsel to do that, or Ms Parrish.

Mr Philip: Let me do it one at a time then, okay?

The Chair: Fine.

Mr Philip: Let me do it with section 231b, because I want the public out there watching to know exactly all the benefits you are taking away from them and what it is going to cost them. Clause 231b(1)(b) says that "all payments that the person has received under any medical,

surgical, dental, hospitalization, rehabilitation or long-term care plan or law"—I would have thought that the Old Age Security Act would be a law, but anyway—"and by the present value of such payments to which he or she is entitled."

That is the exclusion, right? So you have to use up that before you get any insurance. Is that the intent of that? All of those things, if you have negotiated them in good faith with your employer—in lieu of wages, you have these health benefits, you have this extra extended care negotiated—all of this then has to be used up before you collect any insurance. Is that correct, is that the intention there?

Mr Ferraro: The application of the collateral source rule, Mr Chairman, is a recommendation from Mr Justice Osborne. It is supported by just about every lawyer in the province of Ontario and indeed it is doing away with double recovery, which subsequently will have a direct bearing on the amount of premiums that 6.2 million people in Ontario have to pay every year.

Mr Philip: It certainly was not supported by the deputations that appeared before us here, other than the insurance companies.

Mr Ferraro: That is not true.

Mr Philip: That is true.

Mr Ferraro: That is not true. Just about every lawyer supports that, including the Canadian Bar Association. You are factually incorrect, sir.

Mr Philip: Under this clause (b), essentially one of the things you are covering is that OHIP benefits have to be used up first. There is no compensation, either to OHIP or to the insured, and those will be used.

1150

Mr Ferraro: It is nice to know that Charlie McCarthy is not only on my side of the fence, but yes, the subrogation to OHIP—

Mr Philip: Particularly since he has got Mortimer Snerd answering the questions.

Mr Ferraro: I see.

Mr Kormos: I would like an answer.

Mr J. B. Nixon: This is ridiculous.

Mr Ferraro: I gave you an answer, Mr Philip. I am not sure you liked it.

Mr Kormos: You are finally agreeing. Yes, this is ridiculous. We have spent four weeks and the government has no intention of making any meaningful amendments.

The Chair: Order.

Mr Philip: Would you kindly tell us how much this is going to cost OHIP?

Mr Ferraro: The subrogation to OHIP is in the area of \$43 million and the requirement in the act is that each insurance company is going to justify to the commission where that saving is passed on to the insured. So that there is a direct reduction or accounting in the premium paid by the insured vis-à-vis the relinquishing of the subrogation to OHIP.

Mr Philip: Oh, sure. I am sure there will be the same kind of accounting that there was under the wage and price controls that the Liberal government introduced federally. I am sure that the consumers are going to save exactly in proportion to the way in which the Liberals saved them money under price controls.

What you are saying is that it is costing them \$43 million to OHIP. Is that not what you have just said?

Mr Kormos: It will be almost \$46 million.

Mr Ferraro: What I am saying is that OHIP will not be subrogated by the insurance companies, which will then not have to charge that to the insureds in the province of Ontario. There is a direct benefit vis-à-vis the premiums paid.

Mr Philip: If I am a senior citizen or a person who simply does not drive a car, I am having \$43 million taken out of my OHIP premiums in order to pay for matters that the insurance companies would have paid for otherwise. Is that correct?

Mr Ferraro: The reality of the situation is that OHIP is a universal system now and that it would be somewhat redundant.

Mr Philip: But car insurance is not a universal system.

Mr Ferraro: That is right, but you are talking about OHIP.

Mr Kormos: Which is public.

Mr Ferraro: I am not sure what the federal government has got to do with—

Mr Philip: Would you not agree that OHIP is a universal system that applies to everyone whether they are automobile drivers or not and this takes \$43 million out of OHIP and puts it into the hands of the insurance companies?

Mr Ferraro: No, I would not agree.

Mr Kormos: Of course he would not because he is in their pockets.

Mr J. B. Nixon: I do not know whether this question is appropriate for Mr Ferraro or Ms Parrish, but all I want to find out is if there are subrogation agreements between other insurance companies, supplementary health insurance or long-term disability insurance programs and the OHIP system.

Mr Ferraro: Are there?

Ms Parrish: No.

Mr J. B. Nixon: My point is that we can argue about the subsidies, but at least it is consistent with the other types of relationships that exist between disability insurance programs, supplementary health insurance and the auto insurance programs.

Mr Philip: The fact is that the ones that you are talking about are supplementary; this is essential.

Mr J. B. Nixon: You are saying on the one hand that it is essential and then on the other hand you are saying it is not compulsory. I get confused as to what your logic is.

Mr Philip: It is essential because everyone has to have OHIP and you are taking it away from everyone, not just the people who are driving cars.

Mr J. B. Nixon: Then it becomes, in my view, a philosophical question of who is responsible for caring for people who have injuries.

Mr Philip: It appears to me that, if you want to get into that kind of argument—

Mr J. B. Nixon: Discussion.

Mr Philip: —why should people pay premiums to private enterprise insurance companies when they can go with a full public system? If OHIP is going to cover everybody anyway, then why not have one system? Why this massive giveaway to the insurance companies?

Mr J. B. Nixon: First of all, I do not see it as a giveaway to the insurance companies because what is given has to be passed through to the consumers. The question you raise is a much larger question. I thought you were talking about supplementary health care benefits.

Mr Philip: The philosophy of the Liberals seems to be that it is okay for people to be required by law to pay premiums to the insurance companies as long as OHIP pays for the cost when there is an accident, and that is what this clause does.

Mr J. B. Nixon: No. That is the way it is with most insurance systems, public or private. If you look at the public insurance system in Manitoba, there is no subrogation agreement there with the health care system.

Mr Philip: And there is one system.

Mr J. B. Nixon: There is a separate auto insurance system and a separate health care system.

Mr Philip: And there is no profit.

Mr J. B. Nixon: Yes, but stay on the debate.

Mr Philip: Oh no, that is the debate.

Mr J. B. Nixon: No, no, the debate is whether there is subrogation.

Mr Philip: This is a \$43-million giveaway to the insurance companies, and part of that \$43 million is profit. It is not entirely passed on to the—

Mr J. B. Nixon: No.

Mr Philip: Of course it is.

The Chair: Mr Philip, any further questions on the amendments?

Mr Philip: Yes, I have a number of further questions.

Mr Kormos: I have a supplementary.

The Chair: Certainly.

Mr Kormos: I am looking, not so bizarrely, at Canadian Underwriter, February 1990. They mailed it to me, and I appreciate it, like they do every month. I am reading that the Insurance Bureau of Canada spokesman Jack Lyndon said, "For the nine-month period ending September 30...the net result is that auto insurance companies lost two cents for every dollar collected in premiums." That was their loss, two cents on the dollar.

In view of what Mr Philip has been saying about the subsidization by OHIP of the insurance industry, in view of the fact that the elimination of the premium tax alone is three cents on the dollar, again, I know that Mr Ferraro said on Monday of this week that he does not believe the auto insurance industry in Ontario. In that regard he and I are on common ground. He was quoted by Thomson press as saying that he does not believe the auto insurance industry. But let's, for the sake of argument, accept that surely they are not going to overestimate their profits; they are going to underestimate them. If anything, they are going to overestimate their losses because it is the moaning and groaning that they do, which Ralph Nader talked about. They are losing only two cents on every dollar; we are giving them three cents on the dollar by virtue of the elimination of the premium tax.

Why are we talking about \$46 million of taxpayers' money, why are we talking about eliminating \$800 million in compensation paid out to injured people, why are we talking about premium increases of eight per cent to 50 per cent when the elimination of the three per cent premium tax alone puts them into a profitable position based on their figures? What gives there,

Mr Ferraro? I am reading this from Canadian Underwriter. This is the insurance industry itself saying this. Why are we giving away the farm? Why are you doing this to drivers and taxpayers and victims?

The Chair: Before I ask Mr Ferraro, I am sure Mr Kormos would afford Mr Ferraro the same opportunity to respond uninterrupted as he allowed you during your dissertation.

Mr Philip: And as Mr Nixon allowed me.

The Chair: And as Mr Nixon allowed you. Thank you very much.

Mr Ferraro: First, let me say it is unfortunate that we have to get somewhat exercised when we are debating an issue or discussing an issue. I guess maybe there is an allergic reaction to television cameras, but nevertheless that is something we each have to deal with.

Let me qualify my statement. It is right. Quite frankly, I do not trust anybody except my family and my friends. For that very reason, we have established and it is inherent in this bill a very strong, independent insurance commissioner and commission which will verify and substantiate to the general public any and all increases dealing with insurance in Ontario. That is a fact.

I do not accept for one minute the assertions from the opposition that there is a massive giveaway to the insurance companies. If indeed there was, I would be not quite as exercised as Mr Kormos, but very concerned. The fact is that the premium tax exemption and the subrogation of OHIP is a direct flow-through to the insureds in

the province of Ontario. The insurance companies have to account for the fact that the same amount of money that they are not having to pay to the government, the exact amount, has to be passed through so it is then reflected in the premiums that the insured people and drivers of Ontario get that net benefit.

We can argue ad nauseam that this should not have been done, but the reality is, as someone once said, "Taxpayers' money is taxpayers' money." If we did not do that, I am led to believe and told by my advisers, if we did not exempt the three per cent premium tax and the OHIP subrogation, then the people of Ontario could expect approximately an increase of five per cent more on their premium.

Mr Kormos: Your advisers in the insurance industry—

The Chair: Order.

Mr Kormos: I am sorry, Mr Chairman.

Mr Ferraro: Maybe you could control yourself. I was fairly calm, sir.

Mr Kormos: How can I be calm?

The Chair: If you are not calm, I will adjourn the committee for lunch.

Mr Kormos: That could happen. How can I be calm when the taxpayers are being—

The Chair: The committee is adjourned until 1:30.

The committee recessed at 1200.

AFTERNOON SITTING

The committee resumed at 1336.

Section 57:

The Chair: I recognize a quorum. Mr Philip, I believe you had some questions on section 231b.

Mr Philip: I have a question about subsection 5 and the Workers' Compensation Board. Do you have a dollar figure on what this proposal, which you now wish us to pass, is going to cost the WCB?

Mr Ferraro: I do not have an exact dollar figure. I wish Ms Parrish was here because she may be a little more explicit than I am, but my understanding is it is somewhere between \$20 million and \$25 million, but I will get that substantiated.

Mr Kormos: If I may, Mr Chairman, I am familiar with those figures. I can perhaps help the parliamentary assistant.

Mr Abols: I am familiar with the figures as well, but I am familiar with them to the extent that there is some controversy as to what the figures actually are.

Mr Kormos: It is \$25 million to \$50 million.

Mr Abols: That is the problem. We have been dealing with the Workers' Compensation Board directly and it has not been able to provide us with a definitive answer. It has changed over the life of this bill, varied from one high and has come down considerably, so there is no idea really at this point.

Mr Kormos: On a point of order, Mr Chairman: There is a negotiation taking place now with workers' comp. Could the parliamentary assistant update us as to those negotiations?

Mr Ferraro: The only thing I can say is that there are discussions going on, and other than Mr Abols has indicated, we are waiting to get a substantiation of the figure from WCB directly. At this juncture the range is anywhere from \$20 million to \$50 million and we do not know exactly.

Mr Philip: What you are asking us to pass here in this section 57 amendment is a giveaway of \$43 million from OHIP. We have all the benefits in people's sick benefits plans that you are stealing and giving over to the insurance companies. You are taking benefits that range from \$25 million to \$50 million from workers' compensation.

The Chair: I would ask Mr Philip to reconsider the word "stealing."

Mr Philip: Transferring, then. Converting from the pockets of ordinary working people over to the pockets of the insurance companies. That is what is happening.

Mr Kormos: Picking their pockets, mugging them.

Mr Philip: The small businessman out there is being hit by this health tax you have imposed on him and he is having trouble paying that. Now he is going to be hit with higher workers' compensation benefits, thanks to your giveaway of \$25 million to \$50 million on this. Then the poor guy goes out and he has, as part of his package in his business, some health benefits and you are taking those away from him.

For the life of me, if I were a small businessman sitting there wondering where he is going to make his next payroll, I would really wonder what the Liberal government is up to. I would say: "My goodness, did small business vote for these scoundrels? Look at what they're doing to us." I certainly cannot support any amendment that is so crassly anti-small business, anti-worker, anti-Workers' Compensation Board, and more particularly, anti-victim as this amendment. It is, to say the least, highway robbery. I certainly will not be voting for it.

Mr Villeneuve: I am just looking at the presentation that was made by the Canadian Bar Association. Some people would say they may have a vested interest. However, I believe when they touch on the bulk subrogation agreement, they sum it up quite well: "It would seem that the elimination of payments to OHIP will result in a significant benefit to the insurers and is a recognition by the government of the present underpricing of the automobile policy."

The net result of these amendments is that there will be, and I am quoting again from their presentation, "increased costs to OHIP and the government as a result of the loss of approximately \$143 million per annum." I think my colleagues in the New Democratic Party have alluded to it, but this kind of summarizes it well, "Increased costs, particularly with respect to OHIP, will have to be financed somewhere else. It is the belief of the CBAO that these losses will be financed through increased OHIP premiums," that are being borne now by employers, different levels of the total cost of their labour force, and it goes from one per cent to almost two per cent.

That is where the cost is being borne and it looks as if there have been some gymnastics in the figures, but it is pretty clearly stated: \$143 million a year is being added to the cost of OHIP so that automobile premiums are kept down to the so-called eight per cent, and we know that eight per cent comes a lot more often than it is supposed to, for the year 1990. Any savings to the Ontario motorist are offset by increased costs elsewhere. I think they sum it up quite well, and certainly our party will not be able to support these amendments as proposed by the government.

Mr Ferraro: I want to comment as well that the impression obviously is that we are not sensitive to a lot of people's concerns. In this particular case, both opposition members have indicated the small business sector. No one is insensitive to the amount of taxation that the small business person has had to deal with, and the paperwork and all the rest of it from all levels of government. There is justification no doubt, from whatever government's perspective, federal, provincial or municipal. On the other hand there is also in my view—it certainly will not be shared by the opposition members—an upside. We have to draw ourselves back to why we are in this at all and that is because of the cost, the affordability problem with insurance premiums. One can argue, quite frankly, that there is going to be—

Mr Kormos: Not so.

Mr Ferraro: Wait a minute, Mr Kormos. I did not interrupt you.

One can argue that there are going to be more reasonable premiums provided. One can argue that under the new no-fault benefits program many small business people will be better off. I think that is a fair argument.

The other thing I can maybe understand coming from the New Democrats, but I am a little confused when a Conservative says that there is this giveaway, mindful of the fact, Mr Villeneuve, that you are quoting from a particular report. Conservatives, who are supposed to be in the forefront of free enterprise and familiar with the free market system, should know that if there is a cost that is to be incurred, whether it be a premium tax or OHIP subrogation, private enterprise is not benevolent. They do not take it out of their profits; they pass it on to the consumer.

If there is a specific requirement in legislation that will guarantee that this forgiving, if you will, for lack of a better word, of \$143 million is guaranteed and must be justifiably shown to be

passed on to the consumer, I guess I fail to see how rhetoric such as "giveaway" can be sustained.

There is a little scientific logic, that for every action there is an equal and opposite reaction. In this particular case the action is that subrogation and premium tax are not going to be charged. As a result, the net benefit is going to be obvious in the premiums the consumers pay, including small business. With that, I will conclude.

Mr Villeneuve: I believe I have to reply here. I will try to be brief. I think it has been proven that there will be costs here and they will be borne by the public. Whether you call it automobile insurance premiums or whether you call it OHIP, there is a public cost here.

You alluded to small business passing on costs to the consumer. The consumer inevitably always pays, but I come from a large agricultural area and we do not pass on our costs. Many small business people do not have the opportunity to pass on costs. They simply tighten their belts to where, all of a sudden, if there is no more belt to be tightened, they go out of business. I know, Mr Ferraro, what you have dealt with in your other incarnation in the financial business and I think you know what I am speaking of. To insinuate that we, as Tories—that is why we cannot support this in any way, shape or form. We are having to oppose not only the amendments, but the bill for the very reason you have just alluded to.

Mr Ferraro: I accept and I apologize except in the context I was speaking in. I am aware of the fact that not every cost is passed on to small business. I was referring specifically to insurance companies passing that saving on to consumers. It was in that context, Mr Villeneuve. I am mindful of the fact that a lot of small business people and farmers cannot actually get their cost back for it.

Mr J. B. Nixon: If I could just address Mr Villeneuve's comments also, I do not think there is any one at this table who believes, if left alone, the insurance companies would pass those savings on to the consumers, the elimination of the premium tax and the OHIP subrogation agreement. But what we had a few days ago was an explanation as to the rate filing process which will require that when the insurance companies file their rates, a specific part of the form requires them to demonstrate how the elimination of the three per cent premium tax and the cost of the OHIP subrogation agreement has produced a corresponding reduction in the premiums so that it is passed through.

If they cannot demonstrate that the saving is passed through to the consumer, if the commissioner of insurance does not see that there, he will not accept the rates to be filed; they cannot write insurance. So in this case there is a regulatory system. It is the commissioner who will force them to pass that saving and reduction through to the consumer; if not, they are not going to be in business. If that was not there, I would agree with you that it is a giveaway, but it is not because there is a regulator who is saying it has to go through to the consumer.

Mr Villeneuve: Just as a short reply to Mr Nixon, I think this may well be the ultimate aim, that sooner or later the bureaucracy will take over and companies will not be in business. The ultimate aim of this legislation may well appear that it will be another workers' compensation type of legislation, which I think you and I as elected people to this assembly need to be very wary of because that is one of our biggest headaches.

Mr J. B. Nixon: I think you are right that we have to be worried about an expanding bureaucracy, particularly when it is needless, but in this case, I thought there was pretty well a consensus that we needed a strong regulator. In fact the merging of the Ontario Automobile Insurance Board with the office of the superintendent has the goal of establishing a strong regulator. It is not someone who takes over the job of delivering insurance, but it is someone who strictly regulates the marketplace.

1350

The Chair: We have had some thorough discussion on section 231b. Shall the amendment carry?

The committee divided on Mr Nixon's motion, which was agreed to on the following vote:

Ayes

Ferraro, LeBourdais, Nixon, J. B., Sola, Velshi.

Nays

Kormos, Philip, Villeneuve.

Ayes 5; nays 3.

The Chair: I have two amendments to section 208a, back in section 47, and then we will move to 231a, which deals with the no-fault. I would like to try to finish some time around three o'clock, given the weather conditions. Back to section 47, which is on page 25.

Section 47:

Mr J. B. Nixon: Mr Chairman, perhaps you could give me just one moment to confer with legislative counsel to make sure I have the right section 208a.

First of all, there is a motion that was introduced and is on the table which I would like to withdraw. Would you like me to read that?

The Chair: The withdrawal? Just simply withdraw it.

Mr J. B. Nixon: I withdraw it then.

There are two motions dealing with section 208a. The first deals with a new subsection, subsection 2a. I will read it.

The Chair: Mr Nixon moves that section 208a of the Insurance Act, as set out in section 47 of the bill, be amended by adding the following subsection:

"(2a) Notices given under subsections (1) and (2) shall set out the reasons for the insurer's intention or proposal."

The Chair: Discussion? Shall the amendment carry? Carried. Same vote.

Motion agreed to.

The Chair: Mr Nixon moves that subsection 208a(4) of the Insurance Act, as set out in section 47 of the bill, be struck out and the following substituted:

"(4) A contract of insurance is in force until there is compliance with subsections (1), (2) and (2a)."

The Chair: Shall the amendment carry? Same vote.

Motion agreed to.

The Chair: Shall the amended section 208a carry? Carried. Same vote.

Mr Ferraro: May I make a point of thanking the committee for assisting and making that part of the bill much better.

The Chair: Sure, you can do that. Have we carried section 208b?

Clerk of the Committee: No, we have not.

The Chair: Okay, so we are now on to section 208b. Shall section 208b carry? Same vote. Shall section 47, as amended, carry? Same vote.

Section 47, as amended, agreed to.

Section 57:

The Chair: If we could move to page 30, on section 231a, I think there are some amendments.

Mr J. B. Nixon: Bear with me for one moment.

The Chair: Mr Nixon moves that subsections 231a(1) and (2) of the Insurance Act, as set out in

section 57 of the bill, be struck out and the following substituted:

“(1) In respect of loss or damage arising directly or indirectly from the use or operation, after this section comes into force, of an automobile and despite any other act, none of the owner of an automobile, the occupants of an automobile or any person present at the incident are liable in an action in Ontario for loss or damage from bodily injury arising from such use or operation in Canada, the United States of America or any other jurisdiction designated in the no-fault benefits schedule involving the automobile unless, as a result of such use or operation, the injured person has died or has sustained,

“(a) permanent serious disfigurement; or

“(b) permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature.

“(2) Subsection (1) does not relieve any person from liability other than the owner of the automobile, occupants of the automobile and persons present at the incident.”

Mr J. B. Nixon: The reason for the amendment is to extend the restriction on tortious liability for injuries under the threshold to persons present at the incident, such as pedestrians and cyclists.

The parliamentary assistant may want to comment, but I am pleased to see this amendment because I think it directly responds to the submissions made by Cycle Watch and other cyclists and responds to their concerns.

Mr Ferraro: Briefly, Mr Nixon is absolutely correct. They made a very forceful presentation and indeed a very valid one, and it has resulted in this change. I undertook at that point in time as well to indicate to them, and will be corresponding to them, that in fact we have in our view dealt with their concerns, so it was helpful.

The Chair: Before we get into questions and, I guess, comments and discussions on the amendment, which deals with the whole area of threshold, and it is certainly one that has generated a lot of discussion and response, I would ask committee members if they could keep their comments as unobusive, unobnoxious and unbecoming into question the motives of either committee members, insurance companies or witnesses as possible.

In some cases, I have been accused of being too lenient in some areas. I would like to end the hearings on an up note in the sense of decorum for all committee members so that we can leave with an element of, not friendship but an element

of understanding among committee members, as well as other committees that we may sit on.

Mr Philip: If you do that, I will buy you a second Baby Duck popsicle.

Mr Kormos: I should indicate, Mr Chairman, that I think all of us have agreed that because of the inclement weather—and it indeed remains inclement, not just for people who have to go home from outside of downtown Toronto but even for those who live within the greater Toronto area, the GTA, that Liberal artificiality that punishes the folks who live within it—we have all agreed that unfortunately we will have to end at three today rather than at 4:30. This is the last day that was permitted by the government for these hearings. It is unfortunate. I am certainly in agreement. But in view of the fact that we only have basically an hour left, in my comments I want to address the matter of threshold generally. I am prepared that the Chair call the question on this particular amendment so that then we can address the matter of the threshold generally.

The Chair: There is another amendment to that.

Mr Kormos: Similarly with respect to that one.

The Chair: We can do that. Okay.

Mr Ferraro: Mr Chairman, could I thank Mother Nature?

The Chair: Shall the amendment carry? Okay, same vote.

Motion agreed to.

1400

The Chair: Mr Nixon moves that subsection 231a(5) of the Insurance Act, as set out in section 57 of the bill, be struck out and the following substituted:

“(5) In a proceeding involving a plaintiff who cannot recover against the owner of an automobile, the occupant of an automobile or a person present at the incident because of the operation of subsection (1), a defendant is not liable for damages caused by any person who is excluded from liability because of the operation of subsection (1) and is not liable to contribute or indemnify in respect of such damages.”

Mr J. B. Nixon: Again, this amendment clarifies that nonmotorist tortfeasors are only responsible for their share of damages. It is intended to prevent situations in which a municipality, for example, would have to pay an entire judgement when it was only one per cent to blame and the other tortfeasor was one protected by the tort immunity established in section 231a.

The Chair: Shall the amendment carry? Same vote.

Motion agreed to.

The Chair: Now we are on to the amended section.

Can I just check something out here first? In order to be fair to all three parties, I will check with Mr Villeneuve. Mr Villeneuve, did you wish to make any comments on the threshold portion?

Mr Villeneuve: As you know, I am subbing in today. I am not up to speed on this.

The Chair: I appreciate that. I just wanted to check that. Mr Nixon, did you wish to make any comments on the threshold at all?

Mr J. B. Nixon: No, Mr Chairman.

Mr Velshi: May I make a suggestion here? Divide the time equally between the three parties.

The Chair: That is what I was doing. I was checking. If Mr Villeneuve does not, that means that I am going to divide it in half. If Mr Nixon does not, then I am going to allow Mr Kormos and Mr Philip—

Mr J. B. Nixon: I want to ask some questions rather than make comments.

The Chair: You have some questions? Okay. So up to half an hour, Mr Kormos.

Mr Kormos: I have a few questions to ask too. First, the chairman is trying really hard to sanitize these proceedings, and maybe rightly so, because it is some dirty business that is taking place right now and has been taking place for the last several weeks, indeed perhaps for the last year and a half or so. To ask people to not question the motives of participants in these hearings is particularly naïve or goes but further to obfuscate the real agenda that is prevailing here.

Obviously the insurance industry, Mr Ferraro, has motives for its position. I mean, the private automobile insurance industry is as profit-oriented now as it was 10 years ago, as it was 20 years ago or 30 years ago. Indeed, the facts do not lend much to their claim that they have been losing money year after year.

Mr Justice Barr, who appeared before the committee, interestingly pointed out that the same insurance companies that are complaining about losing money now were, in his recollection, some of the same that were complaining about losing money back in 1955, yet they persist and they seem to have done well for themselves, for their shareholders. Their livelihood has

permitted them indeed to prosper in terms of the types of assets they have generated.

Let's address, first of all, the first amendment moved to this section. This was not a change in the government's perspective. What it was was a revelation by bicycle lobby groups that the government has fouled up in the preparation of the bill, that indeed it was so hastily prepared—and no discredit to the people who were pressed into service in that regard—with such a lack of clarity on the part of the government that there were some foulups along the way.

Some of them have been addressed. Some of them have been addressed by virtue of government motion; some of them have been addressed by virtue of critiques addressed to the clauses on the part of opposition members. I was here and I watched the members of the bicycle lobby group when they made their submission, and the distinct sound of the parliamentary assistant's jaw hitting the table could be heard throughout the room because it was, "My goodness, that isn't what we intended." The memo undoubtedly said: "What's going on here? We screwed up another section. We shouldn't have tried to throw this together so hastily. We shouldn't have been so slipshod in our approach."

So you are not responding to the bicycle lobby group. It was an oversight in the first instance, to which your attention was drawn. You have not responded to any of the organizations, any of the individuals, any of the submissions that have been critical of the legislation. It is not no-fault legislation, because it does not do anything to change the basic structure of no-fault benefits as we have known them for over a decade. You know that, Mr Ferraro. It is threshold legislation. It is designed to exclude people from a compensatory system, to exclude the vast majority of innocent injured victims, at least 95 per cent, probably even more.

Mr Justice Barr points out that this onerous threshold—others have commented on its being the most onerous threshold ever included in insurance legislation—is one which may in the final analysis exclude virtually everybody except those who, with certainty, fall within the threshold. Those are dead people. Even then, you have had brought to your attention that there are in the 1990s varying definitions of death and there is still going to be uncertainty about even that because the standard as to what constitutes death is going to become the subject matter of litigation, particularly when it comes to insurance companies resisting payouts, which again is their nature.

The private auto insurance industry's job—and for it to suggest otherwise insults the intelligence of the people of Ontario—is to take as many premiums as it can from the public and to deliver as little compensation as it can to injured parties. That is a distinctive difference between private auto insurance industries as we have here and public auto insurance systems; nonprofit, driver-owned auto insurance systems.

The opposition to this bill has been widespread: over 200 participants, 200 submissions made, only a handful of them in support of the legislation, and those, by and large, being either auto insurance companies or their spokespeople in the guise of brokers' associations.

You received a letter from the Fergus Police Association, Fergus, Ontario, indicating that the members of this association are unanimous in reaching agreement that the legislation, Bill 68, the government and auto insurance industry's insurance scheme, is unfair. "The membership therefore ask"—and it is addressed to Jack Johnson—"that you as our elected representative...convey our concerns" so that the minister can be made aware of that, and I trust that he has.

The corporation of the town of Milton passed a resolution of opposition to the Liberal government's auto insurance scheme. I can tell you that the finance committee of the city council of Welland this week passed a resolution joining with Milton and endorsing its resolution that this legislation is unfair, unacceptable and should not be passed. The real effect of the legislation, and we are talking about the \$141 million that Mr Villeneuve was addressing earlier—that is the smallest part of the whole scenario.

I read to you earlier today the comments by Jack Lyndon on behalf of the Insurance Bureau of Canada pointing out that indeed, on the Insurance Bureau of Canada's own figures—and we know them to be unreliable. We learned that during the Ontario Automobile Insurance Board hearings which reflected on and analysed the 1987 report of loss by the auto insurance industry. Do not forget, in 1987 the auto insurance industry in Ontario said that it lost \$142 million. What the OAIB discovered, even when it was sceptical about the validity of the figures—and that is to say it was sceptical about whether the figures that it had permitted it to reach an accurate conclusion as to the extent of profits, and that is to say it was concerned that its assessment of the profit for 1987 was underestimating the profits—still, the automobile insurance board found that when the automobile

insurance industry says, "We lost \$142 million," what it means is, "We made \$55 million."

1410

I referred you this morning to Canadian Underwriter magazine, a trade magazine for the insurance industry, and this is where I got my information from—from the auto insurance industry itself. It says that in the year 1989 their losses were two cents on every dollar. That is what they said. Again, I am sceptical about that. Most people in the province are sceptical about that because they know that auto insurance industries play with their figures; they place excess amounts in reserve to create an artificial and false image of a loss when indeed a profit is occurring.

Let's take for the briefest of moments the auto insurance industry's claim that it is losing two cents on the dollar, and this gets back to what Mr Villeneuve was talking to you about earlier. The elimination of premium tax alone gives that auto insurance industry three cents on every dollar. The elimination of the premium tax alone more than offsets the claimed, purported, losses of the auto insurance industry and puts it not only out of a loss situation but into the black.

You have done far more than just the three per cent auto insurance premium giveaway to the insurance industry. Do not call it anything but that. Mr Villeneuve was dead on, 100 per cent right, when he called it that, and you are trying to fudge when you deny it. You have not only given them the three per cent auto premium insurance tax; you have given them \$46 million out of the coffers of OHIP, and then added to that, you have given them \$161 for each and every car in the province. That is what your own actuarial tables, your own secret actuarial studies—the ones that the taxpayers of this province in total paid \$250,000 for—reveal to us when you were finally forced into exposing those and revealing those to the committee.

And then you had the nerve to talk about summaries. Your summaries did not address the reality of the Eckler report, and in particular report 24. Your summaries omitted conveniently what document 24 revealed, and that was to say that your own actuary, whom you paid with taxpayers' dollars, who conducted his studies in secret and whose reports you withheld from Kruger and the Ontario Automobile Insurance Board—you withheld the report. You carried on your secret agenda with your secret investigation and you withheld the information from Kruger and the OAIB. That very same report revealed that each and every car was going to result in a net savings of \$161 to the auto insurance industry.

Why? Because that is how much less they were going to pay out in total, in aggregate, under the system that you and they sat down and created and that you call this threshold system.

That comes to some \$800 million, so we are not far off then when we talk about new profits to the auto insurance industry of almost \$1 billion, and that is before any premium increase. That is before the calculation of eight to 50 per cent premium increases, when in fact, even if we accept the auto insurance industry's own figures—and I should say I give you credit for telling the public of Ontario that you do not believe the auto insurance industry in Ontario. You said that. It has been reported. It has been documented. I am pleased for you to have said, "I don't believe, quite frankly, what the insurance companies say."

I appreciate that marginal bit of candour on your part, Mr Ferraro, and I do not blame you for not believing what the auto insurance companies say because they have been demonstrated to be so thoroughly dishonest about their profits. They say they lost \$142 million in 1987. The OAIB determines that in fact they made profits of at least \$50 million.

So giving away the farm, you are selling out the people of Ontario lock, stock and barrel. You are not selling them out; if that were only the case. It is being given away. You are feeding drivers, taxpayers and innocent victims to the auto insurance industry to the extent that, in the first year alone, the auto insurance industry will enjoy windfall profits of close to \$1 billion.

So we have to talk about motive, because people may or may not do things for \$750 and \$1,000, but, I tell you, \$1 billion is a lot of money. A \$1-billion windfall is an incredible windfall. As I say, you want to add to that the eight to 50 per cent increases and we will discover that the \$1-billion windfall ends up becoming a modest proposal in the total scheme of things.

The opportunism of the government during this whole unfolding scenario has been incredible. It has peaked with this morning's *Globe and Mail*, which quotes the absent Murray Elston. I suppose if and when he ever does come back, we will be able to call him the prodigal Murray Elston. As I reflected on it over lunchtime, I whimsically suspected that maybe I am on to something. We have not seen or heard from Murray Elston in this committee since the first day when he came in here to spearhead his attack on people like Ralph Nader and John Bates of

People to Reduce Impaired Driving Everywhere, and then he disappeared.

Now my concern is, is Murray in a witness protection program somewhere getting a new identity, a new name, a new face, a new career? Because the impression that one is left with is that you are going to have to take all the heat on this alone. Murray Elston has not come to your assistance or your aid. In fact he surprises you, he throws hurdles in front of you with statements like this: "More Accident Victims Could Sue Under Proposed Law, Elston Says."

My goodness, that is an incredible thing for Murray Elston to say. It is a remarkable thing, and I know it was because I saw the look on your face when I first read it this morning. I should tell you I can read lips and I will not tell the world what I read your lips as saying, but it was short and to the point and I would have called Murray that myself if he had done it to me.

In any event, we have Murray Elston saying, "More accident victims could sue under proposed law." What are we talking about here? What is going on? You heard from over 200 groups and individuals making submissions. The thrust of the bulk of those submissions was the gross unfairness of the threshold. The threshold is designed to prevent the vast majority of innocent injured victims from receiving or being considered for compensation for their pain and suffering and their loss of enjoyment of life, and from being able to have recourse to the courts, if need be, to enforce what most people in Ontario, I tell you, regard as something of a natural right, to be compensated for pain and suffering when it is unfairly and unjustly imposed on them.

You heard from a broad spectrum of people. You heard from people from all walks of life. You heard from victims. You heard from people, some far less articulate than others, but the poignancy of their message was not in any way diminished by the fact that they perhaps were not as articulate as the presenter before them or the presenter after them. You heard from people like Mr Justice Haines, who did not appear in person but who submitted written comments, who in a lengthy and careful analysis of Bill 68, this auto insurance companies' legislation, told you what was wrong with it.

You heard from Mr Justice Haines, an experienced and learned long-time, now retired, member of our Supreme Court trial bench here in Ontario. You heard in person from Mr Justice Barr, again a recently retired member of the trial division of the Supreme Court of Ontario. Mr Justice Barr did not just come to criticize, and he

indeed has demonstrated himself to be among the most learned of our judiciary. He came with suggestions; he came with help; he came with assistance; he came with a sense of compassion for innocent injured victims who are going to be hurt by your legislation.

In trying to impress, you have persisted in using the line that more money is going to be spread out among more people. You were able to do that until your 39 documents were forced out of you when it was revealed, as a result in particular of document 24, that no more money was not going to be spread out among more people; indeed, less money was going to be paid out in compensation and more money was going to be collected from drivers across Ontario, and not just from the drivers by way of massive premium increases but by way of victimizing the victim, by way of making the victim of a drunk driver a victim a second time at the hands of the Liberal government and the auto insurance industry.

1420

Mr Justice Barr came with a sense of compassion; he came with a sense of objectivity; he told you he had no axe to grind. He did not receive contributions from the auto insurance industry in his election—he was not elected—and he had no intentions apparently of ever doing so. He came and he told you about the fact that it would be prudent to defer action until the effects of tort reform are seen here in the province, legislation that we in the opposition co-operated with fully because we recognized how significant tort reform could be in (1) making the court process more efficient and (2) reducing litigation costs to litigants, even though we know that at best only three per cent of motor vehicle accidents end up in actual litigation.

You heard Mr Justice Barr saying that fault, in his experience, was never at issue, that fault is the most easily determined aspect of that type of personal injury litigation. Obviously the degree of damages, the degree of injury suffered by an individual—and that is precisely the point—is a difficult issue because it is so incredibly objective.

What you heard from qualified, competent, caring people making submissions before you was that the same injury to one person may constitute greater damage. The same physical injury, the same injury quantified in physical terms may constitute a far greater impediment to one person than to another. The existence of arbitrary, draconian, onerous and indeed unconscionable—and that is what this threshold is,

unconscionable—threshold fails to recognize human qualities and the human response to physical trauma.

Mr Justice Barr understands these things and he understands them clearly, not only as a retired and experienced member of the judiciary, but as a person who cares about other people. He presented suggestions to you and they are filed with this committee. He told you that if—and I tell you right now, we do not accept the concept of a threshold—a threshold is retained, it should be amended to exclude the minor claims, and the real minor claims, because your threshold excludes the broken back, the broken legs, the broken arms, the fractured skull, the crushed ribs. That is what your threshold excludes.

Your threshold tells these people that there will not be any compensation for them in this system. You tell these people: "Quite frankly, we don't care. You're not going to be compensated for your pain and suffering, for your loss of enjoyment of life, even when you're the innocent victim." Indeed, the net effect of your legislation right here and now, and you know it and you have conceded it, is that a drunk driver can be treated with more compensation by virtue of provision of wage replacement and no-faults than his victim could be in the event that that victim is, let's say, a child under the age of 16, for whom there are no no-fault benefits by way of wage replacement.

So I tell you, we do not accept a threshold. Mr Justice Barr reluctantly said: "If you've really got to have your way on this one, if your sense of obligation and indebtedness to the auto insurance industry is so strong that you've got to deliver on this one, amend the threshold. Amend it to exclude the real minor claims but not to exclude the claims for serious injuries, the ones that are excluded now, the broken bones, the fractured limbs, the crushed ribs, the broken skull." He offered you a threshold. He drafted it for you. He wrote it for you. He said, "A possible threshold might be death, serious or permanent injury or permanent disfigurement." That would entail psychological damage.

I tell you, of the whole history of events on the part of the government and you representing the minister, the most obscene thing that has happened was the reports of your conversation with some newspaper reporter on Monday morning, wherein you said, "There will not be changes in the threshold. There will not be an inclusion of psychological damage among those people who will be considered for compensation for pain and suffering and loss of enjoyment of life." It is not the first time you said it, because

you said it before in Sudbury in response to Bob Runciman's question where you indicated clearly that regardless of what happens in this committee, we are not going to see any significant changes to the threshold.

This committee process has been but a sham. It joins the ranks of show trials that have taken place throughout history and across the world. The government had no intention of ever being responsive to the articulate, intelligent, rational, reasonable and pleading, begging, prevailing requests of the well-meaning people who appeared in front of it. Mr Justice Barr said all proven economic loss should be recoverable, regardless of threshold, and you have said no. You have said innocent injured victims will suffer not only at the hand of the drunk or the careless or the reckless or the dangerous driver, but they will suffer once again at the hands of this government and the auto insurance industry.

You received strong submissions about the manner in which a victim, the one who is dead or damned close to it, can be confronted twice by wealthy and powerful insurance company lawyers when it comes time to meeting the threshold test. Some of the strongest arguments in illustrating the unfairness of this legislation came when you were told clearly about how unique and peculiar and bizarre and unfair it is for a victim to have to jump the hurdle, not just one but perhaps a half a dozen times, as a wealthy defence lawyer for a wealthy insurance company trots from motions court to motions court until he gets his or her way—and the insurance industry has the money to spend on lawyers to do those things—and then a second time at trial, apparently violating all the traditional rules about—we heard phrases like *res judicata* and things like that. You have not responded to that.

Then you sit in this committee throughout the course of this week and play coy when it comes down to the extent to which there are going to be amendments, because you clearly are not going to backtrack from your promise. This is about the only promise that you and the government have kept, and that is that there is not going to be any effective change to this legislation during the course of these committee hearings. That is about the only promise you have kept, and you know where that places the rest of them.

This legislation is so clearly being proffered at the insistence of the auto insurance industry. I mean they are not being dragged into this new regime kicking and screaming, I can tell you that. They are marching in leading you along on a leash, because they are barking the orders and

you are following them. You heel real good, Mr Ferraro. You heel real good. You have demonstrated that the auto industry has you and Murray Elston leash-trained. If that were all it was, it would be laughable but regrettable, but it is far more serious because far more people are going to be hurt.

You are promising the people of Ontario that they are going to subsidize, one way or another, a \$1-billion windfall for the auto insurance industry. You are promising the people of Ontario that they are going to undergo premium increases, one way or another, of eight to 50 per cent in the first year alone, with no control over the balance. You talk about your commission, your watchdog—oh, come on. You have been touting your superintendent of insurance for years, and you yourself have admitted that you did not give him—and I recall the phrase you used—"the tools to play with," because that is what you do.

The office of the superintendent of insurance has been a sandbox for some well-paid executives to play with their toys. You are making the sandbox bigger, you are throwing in fancier toys and you are spending more money doing it, but that is all it is, playing, because all you are doing is playing at reform, because there is no realistic reform here. You are playing at it.

You are giving the insurance industry the benefit of uncontrolled access to the pocketbooks of drivers. We have never been able to trust the auto insurance industry in Ontario to determine our premiums. They have gouged and grabbed and pickpocketed every opportunity they have had, and now you are telling people in Ontario to trust the auto insurance industry when it comes to determining what compensation ought to be.

1430

The sad thing is that notwithstanding how much you sit in this committee, or elsewhere even, and talk about how very pleased you are to be doing this for the Ministry of Financial Institutions, I contrast those comments with your brief moments of candour, like when you told a newspaper reporter again, it was reported last Monday, that during the course of these hearings the government got hammered, because you know that is what happened.

You know the government had a hard time even coming up with people or groups or organizations to appear before this committee to support the legislation. One person appeared four different times in four different cities under four different banners. When I saw him Ottawa, I said, "Mr Taylor, my goodness, I thought the third time was going to be the last." He said,

"Don't worry, this is the last time." Well, sure, it was the last time. It was the last of the four out-of-town sittings. The government has had one heck of a time hearing from people who support the legislation.

Now what you have to remember as well is that the government did not want these committee hearings to take place. Murray Elston told the public through the press that he wanted this legislation passed by 21 December 1989, which would have meant not a day for committee hearings. It was only as a result of as much coercion as we could apply that these committee hearings were held.

We were promised six days of out-of-town hearings, and as a result of the government majority in the committee using its power in the committee, we were only able to visit four communities outside of the city of Toronto. We specifically suggested Hamilton, which would encompass the Niagara Peninsula and the city of Hamilton, perhaps London, perhaps Belleville, Kingston, but no, that was nixed by the power of the committee.

We sincerely wanted the government—and we wanted to hear from each and every organization, group and person in the province who wanted to tell you what was wrong with this legislation. I know, Mr Ferraro, that there are not just dozens but a score of organizations, individuals and groups out there who were denied an opportunity, victims who were denied an opportunity, not just here in Toronto but in the cities outside of Toronto, even cities that we attended. District labour councils and other labour organizations representing trade unionists and factory workers and tradesmen of all stripes and ilk were denied an opportunity to appear before this committee to tell you what was wrong with this legislation. Maybe it is just as well.

It is time now, I suppose, for me to apologize to all of the people and all of the organizations and all of the groups that appeared before you, because most of them spent a great deal of time and effort in preparing their submissions. Most of them, quite frankly, spent far more time with the Osborne report and with Kruger's Ontario Automobile Insurance Board report, and yes, even with Slater's report, than you did. They spent far more time with this legislation than you did and they betrayed and demonstrated a far greater understanding of this legislation than you ever have.

I apologize to those people, because they invested a great deal of time, energy and hard work into their considerations and they were not

listened to. You did not hear them. You watched them, you played the charade, you participated and you conducted your show trial, but you did not listen to them, not one, not a word, not a sentence, not a paragraph. That is the height of arrogance.

It is hard not to start considering motive, because we know what the motive of the insurance industry is, a payday like they have never seen before, \$1 billion in the first year alone. Now we question your motive. As I say, it is impossible to get involved in this process without considering motive. We question your motive and the motive of the Liberal government and of David Peterson and Murray Elston. We question Murray Elston's because he has seen fit to throw you into the front lines; into the front, Mr Ferraro. He is sitting back in the bunker somewhere immune from all the flak that is flying.

Mr Philip: Making statements.

Mr Kormos: Your comment earlier today was to the effect that it is not over now because we can expect you to be carrying this bill when it gets into the Legislature, so you are being thrown into the front and Murray Elston, the minister, stays in the bunker and he is going to weather it until this legislation gets rammed through.

All I say to you is that there is a ground swell and a growing movement across Ontario that says you cannot fool them any more. It is bad legislation. The people will not buy it. I tell you this, it is your tail on the line when it comes down to a general election. I tell you that, Mr Ferraro.

Mr J. B. Nixon: I feel compelled to make a couple of comments, if I may.

The Chair: Half an hour is yours.

Mr J. B. Nixon: Thank you. As I recall, the decision to have public hearings and a week of clause-by-clause review was a decision of the three House leaders representing each of the three parties in this Legislature. The agreement was that we would have four weeks of hearings, that we would have a week of clause-by-clause review, and that we would travel, which we have done. We agreed that the bill would be reported back to the House in whatever state it was in on 19 March. I understand that it will be reported back to the House for the continuation of clause-by-clause review on 19 March.

I think the committee has done some good work. As everyone knows, we have had extensive public hearings. We have heard a lot of concern expressed about the bill. I think it was valuable to have the public hearings and I wish to

thank all those people who came before us. I wish to thank them for their thoughtful briefs and for the time they spent in preparing their comments.

I recall that many came with different points of view on this bill. There were those who said, "We do not like this bill and you should just throw it out the window and leave the system as it is." Frankly, as you probably know, I do not think the government is prepared to do that, given premiums were being predicted to rise in the order of 30 to 35 per cent this year. The government was not prepared to throw up its hands and say: "Let the market run its course. Let consumers be trodden upon and let their pockets be ripped." That is not what we set out to do. That is not what we promised to do. What we did promise to do was to bring in a regime of a stable marketplace. That is certainly what I said during the election time and that is what I think we are doing. So we could not tear the bill up.

Many others came before us and said: "Listen, we approve of the broad scheme of the bill. We approve of some sort of hybrid threshold no-fault scheme. We like what you are doing. We approve of a strong regulatory body. We have specific concerns."

Those specific concerns were put to us and may have some merit, but they always have to be considered against the backdrop of what the consumer is willing to pay for automobile insurance. I tell you, they are not prepared to pay 30 or 35 per cent more on average than they are paying now. We all know what averages are like. When you have an average of 35 per cent, half of the people will get increases less than that; half will get more. So if you have a 35 per cent average, I could well see 100, 150 and 200 per cent increases. Consumers are not ready for that. Consumers do not want that. This bill attempts to address that.

The concern has been price. The concern throughout the hearings has been ensuring that there is an adequate and fair compensation system in place, that insurance companies do pay what they are obliged to pay, that they pay it in a timely fashion, that they do not continue with their own abysmal record, which everyone has recognized. We all know they have an abysmal record and no one is happy about that. A lot of us are angry about that and this bill addresses that. It puts some very strict fines in place and those guys, if they cannot deliver, will be out of business. Those guys, if they do not pass through the premium tax decrease, if they do not pass through the OHIP subrogation to the consumer where it belongs, will not be writing automobile

insurance in this province, and it is as simple as that.

1440

Our commissioner of insurance is not a highly paid executive. He is a civil servant with a fine professional record as a chartered accountant in the pocket of no one. He is a tough man, a tough person, with a legislative mandate to be tough, to make sure payments are made on time, to make sure rates are filed on time, to make sure that they are fair, to make sure notice goes out to consumers well in advance of termination of their policy.

We talk about some of the provisions in this bill that we tend to forget: section 209a, the excluded driver rule. I cannot help but remember my time in 1985 and 1987, listening to consumers complain and complain because, "Although my husband has been convicted of impaired driving and he no longer drives the car, I still need my car to drive to work and I can't get insurance anywhere." We heard that from wives. People used to say: "What can they do? Do they have to get separated?" That is the only way she could get insurance to go to work.

I remember Mel Swart, the previous member for Welland-Thorold, standing up and saying, "We have to have a provision to exclude drivers." When we brought it in, did the opposition stand up and say, "This is a good thing"? No, they voted against it.

Let me talk about another section, section 208a. This is the notice provision we just dealt with today. This requires that an insurer give notice 30 days in advance of its intention to terminate or change an insurance policy, that the broker has to get notice well in advance, that notice has to be given to the consumer well in advance and they have to be given reasons. If they do not like it, they can go to the commissioner and the commission can hold a hearing on this matter.

The Toronto Star: Remember a couple of weeks ago, "Write in Your Horror Stories?" There were three or four of them about people who got terminations at the last minute and they are suddenly jackbooted into another insurance category? We all knew that was unfair. We knew that was wrong. This bill addresses that. It says it right there.

We went through the committee process and some people tell you this committee process was a sham. I distinctly remember the member for Welland-Thorold (Mr Kormos) saying: "We have to change this to make it better. If notice is going to be effective, then we should do this."

We sat and said, "Yes, you are right," and we amended it in the committee process, so the committee process works. It works well. There is a provision here which addresses a problem that has been pointed out by the media that every Minister of Financial Institutions in the last couple of years has heard about, and we are doing something about it in a very, very tough way.

Let me talk about another new section of the act, section 6f. Everyone knows that civil servants have very strict conflict-of-interest guidelines. I should not say everyone knows; most of us know. Some do not believe it. I know they do. None the less, this bill in section 6f very clearly says that the commissioner of insurance, the superintendent, the director of insurance and all employees of the commission can have no interest, directly or indirectly, in any insurer, agent, adjuster or broker.

It is almost common sense. No government in its right mind would tolerate such a situation. Why is it there? Because the government is clearly affirming to the public in legislation the manner in which it has been operating since 1985. It is an eminently sensible rule. You cannot have a commissioner of insurance with an interest in an insurance company, an agent or a broker. So the government put it forward; we voted for it and the opposition opposed it.

I would like to talk about the witnesses who came before us. I know I have already thanked them. I know I have paid a small tribute, which is not enough, to the work they have done and the contribution they have made. I remember the United Senior Citizens of Ontario coming before us and I remember them telling us how their board, their executive, had had a full hearing on this issue.

They had invited a lawyer from the Committee for Fair Action in Insurance Reform to make a presentation. They invited a member or representative of the insurance companies to make a representation to them. They heard from what they saw as both sides. They sent them out and sent them away. Then they had a discussion. Do not forget that all these people are elected to represent the United Senior Citizens of Ontario. They had a full and thorough discussion and they prepared a brief, got themselves on the list and came in and said, "We broadly support this bill and the goal of price stabilization."

One of the members of the opposition said they had no credibility at all, for only one reason, because they supported the bill. The test in here, the test of credibility has been whether or not you support this bill. That is fine. You can impose

that test on politicians because we are all partisan, but I say to you that you cannot impose that on witnesses who come before this committee.

You cannot impose it on the injured victims who come here, three categories of injured victims. One said, "We would be worse off under this bill." One said, "We would be better off under this bill." Unfortunately, the ones who said we would be better off under this bill were in Ottawa and Windsor and there were a few here. The major part was out of town. In any event, the third category was the people who—you must remember this one, the one in Thunder Bay, the people who came forward and said, "We will be worse off under this bill," and then said, "I have a serious, permanent, continuing injury."

The suggestion was put to him delicately that perhaps he would be over the threshold, and being over the threshold he would have the right to sue, as he does now, because he has a serious, permanent, continuing injury. In addition he would have \$500,000 in long-term care benefits, the \$500,000 medical rehabilitation benefits, the maximum \$450 net wage supplement, none of which he had now but for \$140 a week for two years maximum. The light started to dawn. The person, this injured victim, maybe did not understand the legislation and that is fair. We all have a job to do to explain the legislation. It is complicated; it is complex.

Suddenly he realized, or he may have been realizing, that he would be better off under this bill. His lawyer came running from the back and said: "No, that's not true. That's not true." He sat down and he gave evidence. His evidence was he had four expert medical opinions saying this person was seriously, permanently injured. Then the question was, "Wouldn't that put him over the threshold?" "Well, yes, but why should my client have to go to court?" I am sorry, but that is what getting over the threshold is all about, going to court. That is what these people want, to go to court.

I suggest there are really three categories of injured victims. They are the most important people to be concerned about and we heard from all three: those who would not be as well off—I could argue that they are just as well off; those who would be clearly better off; those who thought they were not as well off, but after examining the facts would find out that they would be better off.

I found my conversation with Tom Heintzman from the Canadian Bar Association—Ontario interesting. I thought the lawyers had a lot to say.

Lawyers have participated in the personal injury litigation process, certainly a major aspect of it, more than any of us and more than anyone else who is here other than the injured victims themselves, and they have much to contribute to this process.

But the message I started getting after listening was, "We're not concerned"—I do not mean to put words in their mouths, so I will say that the message I was getting was that the concern was not about the right to sue. The concern was about the right to compensation. The right to sue is not what people are fighting about. They are fighting about the right to compensation.

1450

Once you move from the environment where you launch lawsuits, engage in litigation for a couple of years and run people down because either you pay them the minimal no-faults or you do not—I am talking about the insurance companies—to an environment where the emphasis and goal is on rehabilitation, prompt payment, prompt delivery, expanded delivery of care, a focus on rehabilitation and making people whole, whole in their families, whole in their community and whole enough to go back to the workplace, or if they cannot go back to that workplace, to another workplace, you are not just talking about sections in an insurance act; you are talking about the way people think about society and how people should be treated.

It came up yesterday when Mr Sterling was here, and I am not going to put words in Mr Sterling's mouth. We have—I will say it—a contentious item in this bill which suggests that for people who have been injured in accidents where they have not had the consent of the owner to drive that car or where someone is riding in a car as a passenger and the driver did not have the consent of the owner, we say, "You guys get full rehabilitation and medical and long-term care benefits." That is what the bill says. "You do not get loss of income, because if you knowingly took that car without the owner's consent, we think there should be a penalty, no loss of income."

The committee fell down on either of two sides. On one side, we punish those people, those wrongdoers, alleged wrongdoers or people who happen to be riding in a car knowing the driver did not have the consent of the owner, punish them to the hilt and put them back on the general welfare system, perhaps wreak havoc in the family and perhaps destroy the family, but make them suffer. We let them lie about on welfare with no rehabilitation and no long-term care. We

do not care if they are quadriplegics. We make them suffer for the crime or misdemeanour. That is one attitude, one approach.

I am sure that in the next 10 weeks or 10 months you will hear all sorts of arguments about wrongdoers being favoured. They are not being favoured, but they are getting some benefits because philosophically we have decided that it is better to take care of our people. They are our people. They are not some aliens who live in a different country, and by aliens I mean from Mars. They are people. They deserve to be cared for. We believe that the majority of people who pay into the insurance pool of revenue believe that too. We believe that Canadians are compassionate, that Ontarians are compassionate. But none the less the argument will resurface and I am sure we will see it twisted and manipulated. You may disagree with me, but I tell you that is where I think the government is coming from.

There has been a lot of discussion about actuarial reports. I will tell you one thing: I think Mr Ferraro hit the nail right on the head when he talked about how you can pick any actuarial report you want to show just about anything you want, depending upon the assumptions they use.

I know that Eckler's Joe Cheng used 1986 data, so his are out of date; he does not have accurate loss costs in there. To the extent that there is this big variation between the estimated loss costs for Bill 68 and the existing loss costs, some people say, "Well, those are 1986 data." Now some people attack Mercer's because Mercer's relied on Michigan data where they have a catastrophic claims fund and a different health care system. So they say, "Well, their estimates are too high." Everyone uses different items of data. Actuaries will tell you what you want to hear depending on what you tell them you want. All those actuaries were commissioned by all sorts of different people who wanted different answers. The actuaries used the best available information at the time.

Ultimately, actuaries cannot create an insurance system nor can they predict the future. No one can predict the future. No one can predict what future loss costs are going to be. No one can predict what the effect is going to be of the elimination of the income tax payments by eliminating gross-up; that is a technical term.

Does anyone remember McErlean and the city of Brampton, the kid and the dirt bike in the city of Brampton; the \$7-million kid? While he was riding a dirt bike around on the city's gravel yard he had an accident. He sued. He won \$7 million. They appealed it. He lost; he got nothing and he

is on welfare. That is what happens with the tort system—sometimes you lose.

We heard evidence that 60 per cent of the people lose or cannot sue and that only 40 per cent win in the tort system. In Brampton, McErlean thought he had it when he had the \$7 million, but \$3 million of it was tax. That is eliminated. So when you talk about these billion-dollar giveaways, first of all, the \$1 billion is not there. Second of all, the differences between the estimated loss costs in the future and the estimated loss costs in the present, a lot of that is tax; \$3 million in the city of Brampton and McErlean, which is a lot of money.

I could go on. I have said in the past how I get upset about this \$93-million premium tax elimination and OHIP subrogation. That has to go to the consumer. That is the commissioner's job.

I remember Dr Slater coming before the committee and saying in very broad parameters—this legislation refines and fine-tunes exactly what he was recommending. The reason I say that is that sometimes I go to learned gatherings of members of the bar and actuarial institutes and so on, and they say: "Who was your expert? Who wrote this for you?" I know I did not write it, because I am just a backbencher. I know Mr Ferraro did not write it. I know that it was the consultative effort over a lot of time of a lot of people working with the Ontario Automobile Insurance Board reference, working with the report of Mr Justice Osborne and the report of Dr David Slater. You can take recommendations from every one of those reports and you will find that they were the same in Slater, the same in Osborne and the same in the OAIB reference, and you will find them in the bill. No one will tell you about that.

You will find people who will tell you that we did not do one thing that Osborne recommended. Let me give you a gross example. Osborne recommended that we maintain the private insurance system. We did that. I know people do not agree with that, but we did that. I could list the recommendations. Osborne talked about the excluded-driver rule. Osborne talked about the collateral-source rule. He said, "You can't have insurance recovering from everyone." They get hit in an accident and they draw on this program and this program and suddenly they are making twice as much off insurance as they were when they were at home. Certainly there's got to be some rationale and reason behind all of this. And so along with the recommendations of the Canadian Bar Association, Mr Justice Osborne said the collateral source rule is necessary and

just. It is necessary to keep premiums down and it is just because we do not believe in overcompensating people.

As the parliamentary assistant points out, Mr Justice Osborne recommended a substantial increase in the no-fault benefits.

Mr Kormos: Not threshold.

Mr J. B. Nixon: A substantial increase in the no-fault benefits. To be fair, Osborne said, "Keep the existing tort system," but he wrote his report in 1987, I believe, based on 1987 data and he said at that time, "I believe the loss costs in the insurance system are flattening out; they won't increase any more." In 1989, when Mr Justice Osborne went before the Ontario Automobile Insurance Board reference, he changed his tune. He said, "Given that lost cost experience is different from I expected, given that lost costs are continuing to increase exponentially, far greater than the rate of inflation, and given that the public is refusing to pay higher premiums," his words were, "something's got to give."

When asked, "What's got to give?" he said, "I don't know, but I guess it's going to be third-party bodily injury claims."

What are third-party bodily injury claims? "The recoveries you get in a tort suit in going to court." That was what Mr Justice Osborne said.

1500

People say that this is a partisan issue, that this is a Liberal scheme. I will tell you, it is not a partisan issue, it is a pragmatic solution, variants of which have been tried by Republicans and Democrats in the United States, by New Democrats and Tories in Canada.

The New Democratic Party, prior to leaving office in Manitoba, said, after a 20 per cent increase in rates in consecutive years: "This can't go on. The cost of claims is driving the cost of premiums through the roof." They said the same thing in British Columbia under the Insurance Corp of British Columbia. What happened in Manitoba was they commissioned a judge to design a new compensation system. The New Democrats commissioned the judge, the judge reported to the Tories and he said, "I want a pure no-fault system." That is what the judge in Manitoba said.

I say to you, you cannot have it both ways. Either you are for no-fault or you are for the right to sue, or you try to be pragmatic about this and adjust an age-old problem which has been that the small accidents are overcompensated and the big accidents are undercompensated. Slater said that. Osborne said that. The OAIB reference said that. The state of Michigan said that. The state of

New York said that. Manitoba said that. They all said that the little accidents, the sore neck ones, get overcompensated; the quadriplegics, the head-injured, those people get undercompensated. This system is an attempt to redress that unfairness, that inequity. Believe me, we are all concerned that it operate efficiently, fairly and for the benefit of the consumer.

I am not even going to get into the personal and ad hominem allegations that have been made about people around this table. I reject them entirely and I do not think I have anything decent to say beyond that about that.

I urge the House to continue with the work on this bill. Thank you, Mr Chairman, for your forbearance throughout.

The Chair: I have two pieces of business, one to call the question on the amendment, and then Mr Philip has a motion.

Shall the amended section 231a carry? A recorded vote.

The committee divided on Mr Nixon's motion, which was agreed to on the following vote:

Ayes

LeBourdais, McClelland, Nixon, J. B, Oddie Munro, Sola, Velshi.

Nays

Kormos, Philip, Villeneuve.

Ayes 6; nays 3.

Mr Philip: I have a procedural motion. I will move the motion. My views are well known, and therefore I will not take the time of the committee by speaking to the motion. I think the motion will be self-explanatory to all members.

The Chair: Mr Philip moves that:

"Whereas the Honourable Murray Elston has only seen fit to appear on one occasion and for not more than four hours; and

"Whereas over 200 submissions have been presented to the committee raising substantive issues and questions which should be addressed by the minister since the minister appeared prior to these presentations; and

"Whereas the parliamentary assistant has replied on numerous occasions during the hearings that members of this committee would have opportunities to raise these issues and questions with the minister; and

"Whereas the only opportunity to fully debate and question the minister on his legislation would be during committee of the whole House debate in the Legislature;

"This committee requests that the chair advise the Honourable Murray Elston of its pleasure that he and not his parliamentary assistant be present in the House to conduct Bill 68 through clause-by-clause debate."

The committee divided on Mr Philip's motion, which was negated on the following vote:

Ayes

Kormos, Philip, Villeneuve.

Nays

LeBourdais, McClelland, Nixon, J. B, Oddie Munro, Sola, Velshi.

Ayes 3, nays 6.

Bill, as amended, ordered to be reported.

The Chair: Before we adjourn, I would like to thank the parliamentary assistant and his staff, all the committee members and all the witnesses. I think it has been both educational and entertaining.

The committee adjourned at 1505.

CONTENTS

Thursday 15 February 1990

Insurance Statute Law Amendment Act, 1989	G-1101
Afternoon sitting	G-1112
Adjournment G-1126	

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair: Pelissero, Harry E. (Lincoln L)

Vice-Chair: LeBourdais, Linda (Etobicoke West L)

Bryden, Marion (Beaches-Woodbine NDP)

Carrothers, Douglas A. (Oakville South L)

Charlton, Brian A. (Hamilton Mountain NDP)

Furlong, Allan W. (Durham Centre L)

Nixon, J. Bradford (York Mills L)

Runciman, Robert W. (Leeds-Grenville PC)

Sola, John (Mississauga East L)

Velshi, Murad (Don Mills L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Ferraro, Rick E. (Guelph L) for Mr Carrothers

Kormos, Peter (Welland-Thorold NDP) for Ms Bryden

McClelland, Carman (Brampton North L) for Mr Furlong

Philip, Ed (Etobicoke-Rexdale NDP) for Mr Charlton

Villeneuve, Noble (Stormont, Dundas and Glengarry PC) for Mr Runciman

Clerk: Carrozza, Franco

Staff:

Revell, Donald L., Chief Legislative Counsel

Witnesses:

From the Ministry of Financial Institutions:

Parrish, Colleen, Director, Policy and Planning Branch

Abols, Imants, Solicitor, Legal Services Branch

Nigro, Albert, Solicitor, Legal Services Branch

Endicott, Eric, Manager, Policy Co-ordination

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